United States Court of Appeals

for the Second Circuit

APPENDIX

Original with affidavit of mailing

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75-1013

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 75-1013

AMPARO PELAEZ DE GARCES,

Appellee,

—against—

UNITED STATES OF AMERICA,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

APPENDIX

DAVID G. TRAGER,
United States Attorney,
Eastern District of New York.

UNITED STATES COURT OF APPEALS
FILED
MAR 27 1975
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

3

PAGINATION AS IN ORIGINAL COPY

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No. 100 DOCKET

74CR 579 COSTANTINO, J.

TITLE OF CASE

THE UNITED STATES

vs.

AMPARO PELAEZ DE GARCES

ATTORNEYS

for U. S.: KIMELMAN

For Defendant:

Steven Bezozo
225 Broadway, NYC.
267-5129

Did import & did possess with intent to distribute cocaine, etc.

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
Fine,		9/[illegible]	Peter Zaffar (2e fee)		
Clerk,					
Marshal,					
Attorney,					
Commissioner's Court,					
Witnesses,					

DATE	PROCEEDINGS
9-19-74	Before Judd, J - Indictment filed.
10/1/74	Before COSTANTINO,J.- Case called- Deft and counsel Steven Bezozo and interpreter Emil Rodriguez present- Deft arraigned and enters a plea of not guilty- motion for reduction of bail- bail reduced to $50.000.00 surety or $25,000.00 cashhor $25,000.00 P.R. Bond- Trial set down for 10/29/74 at 10:00 A.M.
10-2-74	Notice of Appearance filed.
10-22-74	Govts Notice of Readiness for Trial filed.
10-29-74	Before COSTANTINO J - case called - deft & atty present - Steven Bezozo, Esq. - Carmen Maldonado interpreter present - and sworn - trial adjd to Nov. 11, 1974 at 10:00 am.
11-11-74	Before COSTANTINO J - case called - deft & atty Steven Bezozo present - motion to suppress a letter - motion argued and granted -

74CR 579

DATE	PROCEEDINGS
	Trial adjd to Nov. 12, 1974 at 10:00 am.
11/12/74	Govt's memorandum of law filed
11-12-74	Stenographers transcript filed dated Nov. 11, 1974
11-12-74	Before COSTANTINO J - case called - deft present without attorney - case adjd to Nov. 13, 1974 for trial.
11-13-74	Before COSTANTINO J - case called - deft, attorney Steven Bezozo and interpreter Carmen Maldonado present - trial ordered and BEGUN - Jurors selected and sworn - Trial contd to Nov. 14, 1974.
11-14-74	Magistrate's file 74 M 1322 inserted into CR file.
11/14/74	Before COSTANTINO,J.- Case called- Deft and counsel present- Interpreter present- Hearing on Miranda warning held and begun- Hearing concluded- decision reserved-Trial resumed-Trial contd to 11/18/74 at 10:30 A.M.
11-15-74	Before COSTANTINO J - case called - deft , atty & interpreter present - (Steven Bezozo, Esq) decision on Miranda hearing granted as indicated.
11/18/74	Before COSTANTINO,J.- Case called- Deft and counsel present- Interpreter present- Trial resumed- Motion for judgment of acquittal9 motion denied- Trial contd to 11/19/74 at 10:30 A.M.
11-19-74	Before COSTANTINO J - case called - deft, atty Steven Bezozo and interpreter Joaquin Guma present - trial resumed - Both sides rest - Court charges Jury at 12:25 PM - Order of Sustenance signed(lunch) Jury retires to deliberate at 2:35 PM - Jury returns at 5:00 PM and renders a verdict of guilty to count 1 -Motion for judgment of acquittal denied - count 2 is dismissed by the Court. Jury polled - trial concluded - Jury discharged - sentence adjd without date - bail contd.
11-19-74	By COSTANTINO J - Order of sustenance filed (Lunch 16 persons)
11/21/74	Stenographers transcript filed dated Nov. 19, 1974.
11-21-74	Stenographers transcript filed dated Nov. 15, 1974.
11-22-74	Defts Memorandum of Law filed (for Judgment of Acquittal)
11-22-74	Before COSTANTINO J - case called - deft , attorney S.Bezozo present -Interpreter C.Maldonado present- Motion for Judgment of Acquittal argued and granted - Judgment of Acquittal ordered.
11-22-74	By COSTANTINO J - Judgment of Acquittal filed
11/27/74	Stenographers Transcript dated 11/13/74, 11/14/7411/15/74 and 11/18/74 fi
12/11/74	Stenographers Transcript dated 11/11/74 filed
12-19-74	Notice of Appeal filed (by the Govt)
12-19-74	Docket entries and duplicate of Notice of Appeal mailed to the C of A
1-9-75	Order received from the Court of Appeals filed that the record be docketed on or before Jan. 9, 1975.

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CRIMINAL DOCKET

DATE	PROCEEDINGS
1-9-75	Record on Appeal certified and mailed to the C of A
1/13/75	Acknowledgment received from court of appeals for receipt of record
3/10/75	Before COSTANTINO,J.- Case called- Deft not present- Case adjd to 3/14/75 at 10:00 A.M. for bail hearing

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :

against- :

AMPARO PELAEZ DeGARCES, : 74 C 579

Defendant. :

----------x

United States Courthouse
Brooklyn, New York

November 11, 1974

B e f o r e :

HONORABLE MARK A. COSTANTINO, U.S.D.J.

IRA RUBINSTEIN
ACTING OFFICIAL COURT REPORTER

Appearances:

DAVID C. [illegible], ESQ.
United States Attorney
for the Eastern District of New York

BY: STEVEN KIMMAN, ESQ.
and
RICHARD BRUSTER, ESQ.
Assistant United States Attorneys

STEVEN BEZZO, ESQ.
Attorney for Defendant

- - -

THE COURT: All right.

MR. BREWSTER: Your Honor, we do not, of course, dispute that the letter which we are seeking to offer in evidence is hearsay. Our position is, simply, that the co-conspirator exception to the hearsay rule applies.

I think, it might be helpful before arguing the facts to very briefly summarize the usbstance of the co-conspirator exception.

THE COURT: Can I see the indictment, Harold? Go ahead, I'm listening.

MR. BREWSTER: The Government, of course, must show there is a fair, by a fair, preponderance of the independent nonhearsay evidence that the defendant participated in a joint criminal enterprise and the statements in issue were in furtherance of that enterprise. The independent nonhearsay evidence, may be completely circumstantial and it may include acts which take, acts which occurred after the formation of the joint enterprise. And as here, the independent nonhearsay evidence may constitute events, which later occur which bear out or fulfill the hearsay testimony.

In other words, events which occur subsequently

show that the hearsay

to the facts in this case; what did the events show? The letter, which we offer in evidence, stated that the defendant would be the consignee of the furniture. The defendant later was in fact a consignee of the furniture. The letter stated that five beds would be included in the shipment. Five beds were included in the shipment as described in the letter. The defendant made arrangements to pick up the beds as stated in the letter. The feet of one of the headboards was marked with an X, and again as stated in the letter, the cocaine was placed around the headboard and even in greater detail as stated in the letter. The only part of the headboard, which did not include narcotics were the feet.

A telephone number was mentioned in the letter where the defendant could be reached. A tracing of the telephone number led to the very address where the delivery of the beds was made in Queens. Indeed, the very telephone number was furnished by the defendant to the travel agency which she hired to pick up the beds at the airport. The letter mentioned the sum of $300 being provided to cover expenses and taxes in connection with the transportation and importation of the beds. $300 was in fact furnished to the travel agency which the defendant hired to pick up the beds. Even more

[illegible] all occurred and that, [illegible]

[illegible] the letter.

[illegible]

supposed to travel on August 23. As the evidence will show, the defendant's own passport indicated that she arrived in Miami on August 25. The letter, even in dealing with the specifics of the cocaine, specific quality of the cocaine, said that the quality of the cocaine is very good. Particularly, the cocaine marked Number 1.

THE COURT: I see what you're telling me. It may be true but I don't think that is the crux of the facts or the issue this Court must decide. This Court must decide whether or not the interception of this letter by delivery of a postal agent to a person with the similar name of defendant, and subsequent turning over the letter to the FBI, which the letter contains what you say, comes within the purview of this indictment so it can be admitted in evidence. And the hearsay exception [illegible] the Court, of course, applies to hearsay [illegible] as conspiracy section counts included in the indictment.

I know that you cite one case here that [illegible] case, supposedly did not have a conspir[illegible]

count alleged. But that may not be the same set of facts in this case. There is no allegation that she worked jointly with anyone.

It's just an allegation of two separate possessions with the intent to distribute two separate days.

MR. BREWSTER: Your Honor --

THE COURT: I'm going to read the whole thing now.

MR. KIMELMAN: The indictment charging her with the importation, Government proves she acted in concert with other importers in this. The fact it is or is not specific, my mention, to add a conspiracy count the law is quite clear.

THE COURT: Count 1 only deals with importation.

MR. KIMELMAN: That's correct.

THE COURT: Count 2 deals with distribution.

MR. KIMELMAN: Yes, sir.

THE COURT: Definitely, as far as Count 2 is concerned, it is admissible. Can't act in concert there, it assumes knowledge of having possession. So, Count 1 is the only count he can discuss whether there was a concert on September 4, 1974, acting in concert with someone else with the intention to export and --

MR. KIMELMAN: As a matter of fact, Count 2

could be an overt act in furtherance of Count 1.

THE COURT: Well, I had to then, try to sentence under both. Sentence under importation and intent to distribute, you can only sentence them under one. Even though, maybe convicted under both that's another problem we face.

MR. KIMELMAN: IN any case it would be admissible under Count 1. The Court could always give a limiting instruction. It's not to be --

THE COURT: The Court wants to make sure it's absolutely -- you may carry on, I didn't want to interrupt you. Permit you to talk but I don't think that's the crux of all the letter. Not the crux of all makes no difference what the letter contained. The question is whether it's admissible in evidence by law of interception, whether or not there is an exception hearsay rule under Count 1. Count 2, not applicable. All right.

MR. BREWSTER: The letter came into the Government's hands through a completely fortuitous chain of events. A private citizen, who lives in an apartment building in Queens, which was apparently the same apartment building in which the addressee of the letter lived and who had the same last name, received the letter in her own mail. Apparently, the postman

delivered it to her apartment. She, the Government understands, simply out of curiosity opened the letter and read it. Was Spanish-speaking and could read Spanish and became very frightened on reading the description of the criminal conduct laid out in the letter.

She then, after discussin with her husband, they turned the letter over to the Drug Enforcement Administration. Out of a concern with the fact their last name was the same as the last name of the person who the letter was addressed to, they were very concerned they might be implicated in the crime. They in no way, acted in no way on behalf of the Government or as its agents in instrumentalities in turning over the letter.

THE COURT: You say the United States versus Ragerio stands for the proposition you need not, not necessarily to allege a conspiracy? U.S. against Ragerio, I don't see any similarity. Has to do with false testimony, perjured testimony. It doesn't stand for that proposition at all.

It stands for the proposition, when someone appears before a grand jury and witnesses testimony, there is, and sometimes people defendant doesn't subpoena them nor does the -- do they turn over the

witness' statements before the grand jury. They said there was no denial of any rights.

THE COURT: And he affirmed --

MR. BREWSTER: Your Honor, I think Gregory reciting with approval --

THE COURT: That's the very last page, United States against Anunzio, not for that proposition.

MR. KIMELMAN: If I could --

THE COURT: Nothing in there about conspirators in Ragerio.

MR. KIMELMAN: If I may draw the Court's opinion to the very last part of the opinion.

MR. BREWSTER: On page 607, your Honor. The opinion states that the testimony was admissible in the trial, Judge's decision, even though the indictment did not charge a conspiracy at the very end of the paragraph. There is something different now.

THE COURT: This is testimony of three other people. These people actually were produced in Court. Testimony was whether their testimony was admissible and that's not the same thing, we're not talking about the same thing. Doesn't stand for the proposition you're giving to the Court.

MR. KIMELMAN: I think this was cited for a very limited proposition.

THE COURT: Not for the question that is before the Court. They had direct proof they were co-conspirators. There was direct proof on that case testified before a grand jury.

It's altogether different and that's not the same thing. Very limited, three people testified a question of testimony not evidence. That's a characterization of intention on Anunziato. This is the very person who's being charged with the statement, the person being charged with the statement. In Anunziato, someone else, Anunziato just the reverse. Defendant who was charged made a statement to his son that nobody else heard. That's not this proposition, not this proposition at all. I really don't think the case stands for the issues that you're giving to the Court. The issue's not the same and take a look at it; that's different.

MR. BREWSTER: Under Backer, the statements may not even be made in the Defendant's presence.

THE COURT: That's [illegible] right. There are the statements and here we have [illegible]nt. Here we have statements that are, an interception given to a third party, which is saying to bind and indict where you have no proof whether that third party even sent that letter. You don't know that just now. You

received the letter.

MR. KIMELMAN: Your Honor --

THE COURT: How can you say co-conspirator?

MR. KIMELMAN: Your Honor, the Government would offer proof the letter was sent in the regular course of mail.

THE COURT: You move the person that sent it was conspirator of this defendant?

MR. KIMELMAN: The co-conspirator of this defendant is purely circumstantial.

(continued next page)

THE COURT: Excuse me, Mr. Brewster enunciated the fact in this case that will show a circumstantial evidence, the person who did in fact send the letter was a co-conspirator of this defendant. Because everything that was said in that letter, every event that was predicted in that letter by the evidence who sent that letter, whatever his true identity may be occurred.

THE COURT: But you see there could be no greater proof in Anunziato, they already decided the person who made the utterance was a co-conspirator.

MR. BREWSTER: Your Honor --

THE COURT: Proof preceded the proof, which preceded the proof, which they submitted you to read it. That's different. You can't say there is a letter outstanding, it's a co-conspirator's letter.

MR. BREWSTER: I was directing my statement --

THE COURT: The circumstances, evidence must rest of necessity, rest on its own avail.

MR. KIMELMAN: Absolutely.

THE COURT: Where does this letter rest that somebody sent it, you presume somebody sent it, but upon what? Circumstantial evidence?

MR. KIMELMAN: Your Honor, according, in the United States with marked, with an X it came to --

THE COURT: Providing you can get the letter in. You can show she had cocaine.

MR. KIMELMAN: For the Government to make its argument to the Court, the Court must accept that the Government's proof is true for the limited purposes of deciding whether there is a fair --

THE COURT: I can take an offer of proof at that point. To determine whether or not the facts you are telling me would be facts proven during the trial.

MR. KIMELMAN: If I may, your Honor, the case law says it's --

THE COURT: I can tell you, I came out here with the intention of allowing that letter to be placed in evidence, but after hearing the argument, then reading these two cases, I now find it is not at all what my original decision would have been. Because there is something failing along the line.

MR. KIMELMAN: Well, if the Court could explain to me, I'm not quite understanding. Is the Court's objection based on the fact that the Government does not have a fair preponderance of hearsay evidence to offer?

THE COURT: I don't know what you mean, "does the Government have." I don't know. I haven't heard the case. I don't know what you're talking about.

I am saying to you as any argument stands at this point, may be a premature argument. There is no co-conspirator or considered evidence, nor is there anyone that presumably is working in conjunction with this person allegedly in any way. So, therefore, the motion at this time is premature and if he's going to request a suppression, this is not the time for suppression.

This is no different than any other piece of evidence that will come before the Court. I will not make an advance ruling on it.

MR. KIMELMAN: Your Honor, the Government thinks this piece of evidence is essential to the Government's case.

THE COURT: You asked me to make an advance ruling on it. It's not going to be in your favor.

MR. BREWSTER: It would be impossible to try this case in any logical order, your Honor, unless this letter is presented at the beginning of the Government's case.

THE COURT: Only thing you're trying is whether or not she had the cocaine in her possession with the intent to distribute it.

MR. KIMELMAN: Also, your Honor, Count 1 in the indictment, whether this defendant did import into the United States this cocaine.

THE COURT: What difference does it make to the intentional distribution of it or importation as far as your case is concerned?

MR. KIMELMAN: Your Honor, the essential elements of this case. This defendant knowingly imported into the United States --

THE COURT: Only have to do it through that letter. I tell you, you have no proof whatsoever because the letter fails on the co-conspirator situation. It's not within the boundary set, not within the issues developed in those two cases.

MR. KIMELMAN: If I may, I would ask the Court, this is the original letter. This is a translation of a letter that Mr. Bazozo has looked at and has agreed it is a proper translation. I would ask the Court before making it's ruling at least --

THE COURT: I haven't made any ruling on it, right?

MR. KIMELMAN: Before you make the ruling, I would ask that you at least read the letter so that it might be somewhat clear, the context as to what we're talking about.

THE COURT: I know what you're talking about. A letter that was mailed presumably to this party which is intercepted by someone else, not even

delivered to someone else. Has the same last name and turns it over; that's what the paper says.

MR. BEZOZO: The letter, I think you have something -- the letter supposes to be delivered to a third party.

THE COURT: It says here --

MR. BEZOZO: Wasn't supposed to be delivered to the defendant.

THE COURT: I'm only telling you what --

(The Court reads the letter.)

THE COURT: That's what it says in this paper.

MR. BEZOZO: The defendant is not Irma Mcha.

THE COURT: I can only tell you what I am reading. I didn't make up this summary. It's what it says. You want to change it? When you submit a brief to the Court, you make sure the Court has some knowledge of it. This is not what it says here.

MR. KIMELMAN: The facts stated in the brief are correct.

THE COURT: My interpretation of this letter, is that it is to be delivered to her the way this reads. That's the way it reads to me. Who else is supposed to interpret it?

MR. KIMELMAN: [illegible]

THE COURT: You read it and see if it doesn't

say that? The letter came into the Government's possession and the following, the letter erroneously was delivered by the Postal Service to the individual unrelated, Irma Meha.

Which, is the defendant, I assume but apparently living in the same, different with the same last name.

MR. KIMELMAN: Your Honor, I think that's not the defendant. This is the defendant, in this case is Amparo de Garces. This was a letter in fact sent from an individual named William, to Irma Meha. The letter mentions the defendant on trial.

THE COURT: Supposed to go to a third party? That's even worse.

MR. BEZOZO: That's what I say.

THE COURT: That's even worse.

MR. KIMELMAN: Your Honor, I don't believe it's worse.

THE COURT: No. How are you going to charge her with knowledge of what they are sending somebody else?

MR. KIMELMAN: Under the law f conspiracy.

THE COURT: You don't have a conspiracy. First, you've got to show a conspiracy. If she has no knowledge of content of an item, how --

MR. KIMELMAN: We are attempting to convince

[illegible] the Court's there is evidential of a conspiracy by the [illegible] everything said in this matter has been [illegible] by the record.

THE COURT: That's after the fact. That's after the fact.

MR. KIMELMAN: The Court, if I may, your Honor, is able to decide in advance of the Government's actual proof. The Government is making a good faith offer.

THE COURT: No question about it.

MR. KIMELMAN: I would not in any way represent to this Court --

THE COURT: I'm not saying you did. I just misunderstood the name.

MR. KIMELMAN: That I could not prove.

(continued next page)

THE COURT: I read the two of them together that's why the problem is in. In any event, to me it's even worse. Delivered to a third party unrelated to the defendant in this case and then, turned over to the FBI.

MR. KIMELMAN: If your Honor please, there is three people in a conspiracy. A and B have a conversation outside of this defendant's presence.

THE COURT: Oh sure.

MR. KIMELMAN: A and B mention mention this defendant's name as saying this defendant did this and this in furtherance of the conspiracy.

THE COURT: Show in a conspiracy there was an intention to form a conspiracy? That some of the acts were carried out; that the acts were carried out because of it? In no intention to carry something out, doing something doesn't form a conspiracy; four things required essentially in a conspiracy.

You lack three of them to start with.

And the fourth, you lack because she never received the letter.

MR. KIMELMAN: If I may disagree.

THE COURT: Get the four essentials on conspiracy.

MR. KIMELMAN: Whether this defendant ever knew

of the letter or the defendant ever knew of any conspiracy between the other defendants, any other co-conspirators, is not necessary.

By being --

THE COURT: That's not so.

MR. KIMELMAN: By being in a conspiracy.

THE COURT: We will see at this point whether or not you come within -- that's why you didn't allege conspiracy in the indictment. The very reason for it because you couldn't prove a conspiracy. Otherwise, you would have alleged it.

MR. KIMELMAN: Your Honor, there is no other defendants available for trial.

THE COURT: Whether they're available or not, you can allege co-conspirators without being present at trial.

MR. KIMELMAN: Yes, sir.

THE COURT: But do you know any co-conspirator? You thought might have had something to do with the alleged conspiracy?

You don't disagree with that?

MR. KIMELMAN: No, sir.

THE COURT: Sure. Yes, it's a problem.

MR. KIMELMAN: All I'm arguing to the Court, the Government strongly believes and the evidence is

such that in cases like the Maplin case, which was decided this month by the Second Circuit, if a prior conversation between a co-conspirator is considered hearsay, if the event talked about in that conversation actually occurred --

THE COURT: Where are you going to get the prior conversation from?

MR. KIMELMAN: Your Honor, the Government submits this letter is as a document, obtaining hearsay. The same standards as if they were having a conversation. No difference between a letter, which is actually a better letter of a conversation between two individuals.

THE COURT: If she had received it, sure. But the letter, someone else, intention, knowledge, posession. You can't --

MR. KIMELMAN: Your Honor, the evidence of the events actually show this defendant's knowledge, intention, so-on and --

THE COURT: You are talking about presumed knowledge. The fact she had the items in her [illegible], therefore, she must have know what was in them? No such thing as presumed knowledg in criminal law.

You can't presume intent, you can't presume knowledge, indefinitely.

This is the other part of it. That's beyond a reasonable doubt. You got to show the four essentials on the record.

One; conspiracy described in the indictment was willfully formed, was existing at about the time alleged. Became a member of the conspiracy.

One of the conspirators, thereafter, knowingly committed one of the overt acts charged in the indictment at or about the time, place alleged that such overt act was knowingly done as charged.

In addition to that, you have to have the intent.

MR. KIMELMAN: I believe your Honor, the Government's proof establishes each of those elements.

THE COURT: Then, you would have charged the conspiracy if you had that. That's the reason why you didn't charge conspiracy.

So, the next thing is, next it em is you would have Count 1 and Count 2 and you have her charged in Count 1 with knowingly, intentionally, importing then you have a charge with possession.

MR. KIMELMAN: That's correct.

THE COURT: And neither one of which requires any other person to be involved in this indictment. Neither one of them --

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MR. KIMELMAN: But, your Honor, the proof shows there were other people involved.

MR. WEBSTER: Proof shows a third person received the letter. No other people.

No proof this defendant ever received any such notice. On this letter, I'm talking about --

MR. KIMELMAN: Your Honor, if the Court, has the Court read the translation of the letter?

THE COURT: I don't -- wouldn't make any difference whether I read the letter. Are you telling me she saw this letter?

MR. BREWSTER: No, sir.

THE COURT: What difference does it make? I haven't seen it either.

MR. WEBSTER: I am saying, every event mentioned in that letter, and further events that will occur, does occur.

That the proof is such that this defendant would have to know of all the events mentioned in this letter and therefore, the conspiracy [illegible].

THE COURT: How can you presume knowledge? You are presuming knowledge by a piece of paper. You can't presume knowledge in criminal law.

You're saying the fact she received whatever type furniture it was, therefore, she knew what was

inside the furniture. You can't presume that.

MR. BREWSTER: Your Honor, the Government --

THE COURT: You must presume to show that she had knowledge not the --

MR. BREWSTER: Your Honor --

THE COURT: You've got it back.

MR. BREWSTER: I meant to say that the Government is feeling that this defendant had knowledge by the actions that she took and every action she took.

THE COURT: I have heard about her actions so far. Except, the individual I'm going by that I have heard about her actions.

I assume you found cocaine in her apartment or in the bed in the furniture, wherever it was. I know nothing else about it.

MR. BREWSTER: Your Honor, the Government, I believe the Government's duty at this time is to make its offer of proof as to the evidence that it has to show this defendant's knowledge.

I would be very happy to do that.

THE COURT: Then, we should do that.

MR. BREWSTER: At this time?

THE COURT: Okay. Is that by way of testimony?

MR. BREWSTER: No, sir. I'm saying by

[illegible]

THE COURT: No good. An offer of proof is by way of [illegible] what [illegible] would be in the case in reference to the knowledge.

MR. BREWSTER: Then, in effect, we're trying the case at this point.

THE COURT: No, we're not trying the case. I gave you two ways of doing it.

I said I would reserve decision on it until the time that we arrived at disposition, determine whether or not this letter should go into evidence when the case is being tried and I think that's the time it should be done.

That's the time you should offer it to me at that time, you say, Judge, I would like now through this witness to make an offer of proof. It's not a question of suppression at this point.

MR. BREWSTER: In any event, your Honor, the Government could offer it subject to connection if the Court go --

THE COURT: I'm not trying cases subject to connection, I'll tell you [illegible] now. I got wound up in one of those subject connection cases in this Court and never [illegible].

There is nothing [illegible]

connection because you never know what you're connecting after a while. We have a very very simple case here -- factual situation. Did she have cocaine or did she have knowledge of the cocaine?

Did she intentionally possess it with the possession, distributing and number two, with the deportation, have knowledge of that deportation. Very simple case.

MR. BREWSTER: I agree, your Honor.

THE COURT: Let's try a simple case.

Why should this be --

MR. BREWSTER: Because the facts of the Government's position indicates that this defendant --

THE COURT: You're going to argue with me and I'm not going to argue. Next three weeks, what do you want to do?

If you don't want to do it in the manner of introducing your indictment, then let the Court rule that's your business. You can try the case as you see fit. I, at this point, I reserve decision on the application and I'll make my determination at the time of the trial, when the letter being offered at that time, I shall let you know what my opinion is as to this letter being admitted into evidence. And, we shall proceed on the count of the indictment.

MR. BREWSTER: Your Honor, I don't wish to force the Court into making a ruling at this time, but I would ask for a very short recess. Just give me ten minutes.

I may consider the action that I should take.

THE COURT: All right. We may take a half hour.

MR. BREWSTER: Thank you.

* * *

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

-against- :

AMPARO PELAEZ DE GARCES :

Defendant. :

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United States Courthouse
Brooklyn, New York
November 11, 1974

BEFORE:

HONORABLE MARK COSTANTINO, U.S.D.J.

IRA RUBENSTEIN

ACTING OFFICIAL COURT REPORTER

A 32

APPEARANCES:

DAVID C. TRAGER, ESQ.,
United States Attorney for the
Eastern District of New York

BY: STEVEN KIMELMAN, ESQ.,
Assistant United States Attorney

STEVEN BEZOZO, ESQ.,

Attorney for Defendant.

* * * * *

THE COURT: The Government here seeks a ruling that a letter be allowed into evidence through the co-conspirator's statement exception to the hearsay rule.

Before such a statement may be introduced there must be a preliminary showing by a fair preponderance of the independent non-hearsay evidence that; one, the defendant participated in a joint criminal enterprise, and two; the statements in issue were in furtherance of that enterprise.

The government argues that in making this showing, it can introduce the questioned hearsay and show that it is true. Thereby, providing independent evidence of the conspiracy. It cites United States v. Randall, 491 F 2d 1317 (9th Circuit 1974) to stand for the principle that events which follow the hearsay and bear it out, can be used to establish the conspiracy.

The facts in Randall, however, establish that several pieces of evidence were used as a basis for the finding of a conspiracy.

Among these,was the indepedent evidence which bore out the hearsay. But also included in the Court's finding in Randall was truly independent evidence of complicity in a conspiracy. No such evidence is

offered here.

The very reason for the requirement of an initial finding of a conspiracy by the Court is so that possibly an unreliable hearsay will not be used against a co-conspirator until a conspiracy is established.

Here, where no conspiracy has been charged, to use the very hearsay as the indepedent evidence would defeat the very purpose of the rule.

Accordingly, unless and until the Government introduces independent evidence establishing a conspiracy and defendant's complicity, the letter will be excluded. That's the Court's opinion.

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

-against- : 74-CR-579

AMPARO PELAEZ DE GARCES, :

Defendant. :

----------x

United States Courthouse
Brooklyn, New York

November 13, 1974

B e f o r e :

HONORABLE MARK A. COSTANTINO, U.S.D.J.

IRA ROBINSTEIN,
ACTING OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: STEVEN KIMELMAN, ESQ.
Assistant U.S. Attorney

-and-

RICHARD BREWSTER, ESQ.
Assistant U.S. Attorney

STEVEN BEZOZO, ESQ.
Attorney for Defendant

(The following took place in the presence of the jury. Time noted: 3:15.)

THE COURT: All right, we'll now have openings by the Government.

MR. KIMELMAN: Good afternoon, ladies and gentlemen: Your Honor, Mr. Bezozo:

As you know, my name is Steven Kimelman and this is Mr. Richard Brewster, and we are Assistant United States Attorneys. As such, it is our responsibility to present the evidence and argument in this case for the United States Government. But before I present any evidence to you, as Judge Costantino explained to you, I'm afforded an opportunity to make an opening statement, and this opening statement is simply a broad outline of what you will hear and see over the next day or two.

It allows me, hopefully, to answer the two questions that I think any juror beginning a criminal case would like to know; first, what is the defendant charged with; and second, how will the Government prove its case? This defendant as Judge Costantino explained it to you, is charged in a two-count indictment. Count 1 of the indictment charges that "On or about the 4th day of September of 1974, at

John F. Kennedy International Airport, this defendant Amparo Pelaez De Garces, did knowingly and intentionally import into the United States from a place outside the United States a quantity of cocaine hydrochloride, which Congress has described as a Schedule II narcotic drug controlled substance." And the Government alleges this is, this act was done in violation of Title 21, United States Code, Sections 952(a) and 960(a)(1), Title 18."

Count 2 involves the same cocaine that in this count the defendant is charged, "On or about the 11th day of September, 1974, with knowingly and intentionally possessing with intent to distribute cocaine hydrochloride."

And this is in violation of another section of law. This section is, "Title 21, United States Code, Section 841(a)(1)."

Those are the charges. Both involve the same amount of cocaine and both involving different violations of the law. At the end of the case, Judge Costantino will explain to you what these legal terms mean in the indictment and what is required for the Government to prove the defendant guilty. What is required by the Government to prove that the

defendant did possess this with intent to distribute.

Now, how would the Government prove its case? As you might imagine, the testimony comes in through witnesses and those witnesses relate what they have seen, what they have heard, what they did, and there are exhibits, physical pieces of evidence. The cocaine, other physical items that the witnesses will explain to you what their relevance is and the testimony, you have to keep in mind comes in disjointly. Not necessarily comes in chronologically. One witness won't get up there and tell you the whole story. Each witness knows a certain part of events. At the end of the case, as Judge Costantino explained it to you, the lawyers will get up and they will summarize the testimony and what the lawyers believe; what the Government believes; and, myself. What the defense believes, Mr. Bezozo, and what this evidence all means. How it ties up in a picture.

In this caseyou'll hear testimony that on about the 4th of September, approximately three pounds of cocaine were smuggled into the United States through Kennedy Airport in five bed frames. Hidden inside one of the headboards of the bed frames were ten packages of cocaine hydrochloride. This was discovered in a Customs search by inspectors of

The United States Customs Service, who notified Special Agents of the Drug Enforcement Administration [illegible] on the 11th of September when somebody came to pick up those head boards and this individual was hired by this defendant to pick up the head boards. Because in fact these headboards and bed frames were coming into the United States in a shipment consigned to this defendant. And you will hear that when this individual who did not know about the cocaine was informed of the circumstances, the individual agreed to accompany an undercover agent of the Drug Enforcement Administration to the delivery of those headboards to the defendant. And the delivery was made of the headboards on the 11th of September of this year.

The defendant signed the receipt for those headboards, took the headboards in her possession and was arrested. So you can see what we're dealing with. A fairly simple charge; the testimony should not be too difficult. I ask you to use your [illegible] to keep an open mind, to pay careful attention to every witness. Judge that witness' credibility as Judge Costantino instructed you. Weigh what motives that witness might have to either tell the truth or not tell the truth. I think that's

this case will boil down to one simple issue; did the defendant Angelo Bezozo [illegible] hidden inside the headboards, when the import [illegible] and when she possessed did she know that cocaine was inside the headboards? That is the evidence that is going to be presented to you and that the Government believes is the only issue that's involved.

Ladies and gentlemen, it will be a relatively short trial. Again, all anybody can ask of you is tokeep that open mind. To listen as intently as you can and I think if you do that that justice will prevail in this case; thank you.

THE COURT: Does the defendant wish to open?

MR. BEZOZO: No, your Honor.

THE COURT: The defendant passes.

First witness for the Government.

MR. KIMELMAN: Yes, sir. Government calls Contrad Bebel.

G O N T R A D B E B E L , called as a witness, having been first duly sworn, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. BREWSTER:

Q Mr. Bebel, would you please state the name of [illegible]?

A Air France.

Q Will you please tell the ladies and gentlemen on the jury where you are employed by Air France?

A At John F. Kennedy Airport.

Q And what is your title, sir?

A I'm the Assistant Cargo Manager for Air France at the airport.

Q How long have you been Assistant Cargo Manager?

A Ten years.

Q Mr. Bebel, does Air France maintain business records in the ordinary course of its cargo business?

A Yes.

Q Are you fully familiar with the business records that Air France maintains in its cargo operation?

A Yes.

Q Mr. Bebel, can you, would you tell the ladies and gentlemen on the jury whether Air France receives anything in the nature of the shipping document or a bill of lading at the time goods are shipped on flights

A Yes, sir.

Q What is the name of the -- what do you call the shipping documents in question?

A It is an airway bill.

Q Mr. Bebel, are you [illegible]

subpoena?

A Yes, sir.

Q Pursuant to a subpoena, have you brought with you an airway bill relating to a particular shipment of furniture from Bogota, Colombia, to New York?

A Yes.

MR. BREWSTER: I'd like to offer this airway bill for identification.

THE CLERK: Document marked for identification as Government Exhibit 1.

Q Mr. Bebel, would you please explain what exactly is an airway bill?

A An airway bill is a contract between the shipper and the company; the carrier, the airway bill contains certain information to the shipments, the particular data shipment; the number, the name and address of the shipper; the name and address of the consignee, the amount of pieces being shipped, the weight, the pieces being shipped and if there is any money involved prepaid or collect.

(continued next page)

Q Mr. Bebel, when you say that the [illegible]

the shipment in question?

A Yes. The number is the identification that is put on the packages or the package.

Q Does the airway bill describe the contents of the shipment?

A Yes.

Q Does the airway bill also indicate the flight number and the departure date?

A Yes.

Q Mr. Bebel, I'd like you to examine the Government's Exhibit marked for identification as Exhibit 1. Can you determine from your examination of the Government's Exhibit 1 the airway bill number?

A Yes. The number is 44924740.

Q Can you also determine the name and address of the shipper?

[illegible] shipper is

[illegible]

Q From your examination, [illegible] name and address of the consignee that is to [illegible] recipient of the shipment?

A Yes. The consignee is [illegible] 56 Van Ness Street, Apt. 5E, Elmhurst, New York.

Q Does the Government's Exhibit 1 indicate the contents of the shipment?

A Yes; two crates containing wood furnitures.

Q Does Government's Exhibit 1 indicate whether Air France's freight was prepaid in this case?

A Yes. The shipment was prepaid for the amount of $156.51, U.S. dollars.

Q Finally, Mr. Bebel, does the Government's Exhibit 1 indicate the Air France flight number and the departure date?

A Yes. It was shipped out of Colombia on Air France flight 1342 of September 3rd.

Q Does it indicate the connecting flight on which it -- the connecting flight on which it arrived in New York and the date on which it arrived in New York?

A The airway bill does not indicate the connecting flight, but upon arrival we put the flight upon which the shipment arrived, which is in that case 040 of September 4th.

Q The shipment arrived in an Air France flight 040?

A 040 of September 4, 1974.

Q Mr. Bebel, can you determine where the original flight went from Bogota, Colombia, from examining the airw

bill?

A Yes. This flight went to Guadeloupe, Point-a-Pitre, Guadeloupe.

Q What happened to the shipment at Point-a-Pitre, Guadeloupe?

A The shipment was transferred to Air France flight 040, from Guadeloupe to New York.

Q Mr. Bebel, on arrival of a shipment of cargo at John F. Kennedy International Airport in New York, would you please explain to the ladies and gentlemen on the jury what procedure Air France follows?

A Upon the reception of a shipment, we prepare a set of documentation that we distribute.

The first copy or the original copy went to U.S. Customs for declaration of the goods.

The second copy you retain as part of our file, as proof that when the shipment is released, we have the Customs's stamp on it.

The third copy is [illegible] trucker is involved.

The fourth one is a tally sheet on which we report all pertinent information in this particular [illegible] send to the consignee.

Q Mr. Bebel, would you explain further what sort of information ins contained in the tally sheet?

A The tally sheet contains the airway bill number, the consignee's name, the amount of pieces, the weight, the flight information, the date the arrival notice was sent and probably by reference who sent it.

Q Mr. Bebel, what is an arrival notice?

A An arrival notice is information on a piece of paper which we put certain elements concerning the arrival of the goods and how it should be declared in U.S. Customs and so forth. When the shipment arrives at a certain date, that he must come to declare the U.S. Customs.

Q To whom does Air France send an arrival notice?

A To the consignee.

Q To the receiver of the shipment?

A The consignee, yes.

Q Mr. Bebel, can you identify this document as an Air France tally sheet?

A Yes, it is an Air France tally sheet.

Q Would you please explain how you can identify this as an Air France tally sheet?

A First got the company name on it, tally sheet. Got the airway bill number on it. I can recognize the signature of the employee who prepared this documentation.

We got the amount of parcels, the weight, the foreigh port of lading, the date that the notice was sent to the consignee.

Q Does the employee who prepares the tally sheet sign his own name?

A He signs his own name plus a code that we use, like F two, so that when he sends an arrival notice he doesn't have to send his name because we have the notice.

Q What code appears on this?

A F-2. That's the code for the employee who sent the arrival notice.

Q You recognize that?

A Yes.

Q That code designation of that employee?

A Yes.

MR. BREWSTER: I offer this document for identification.

THE CLERK: Document marked for identification as Government's Exhibit 2.

(So marked.)

Q Mr. BEbel, I would like you to examine the Government's Exhibit marked for identification as Exhibit 2. Can you determine -- have you had an opportunity to examine it, sir?

A Yes.

Q Can you determine from your determination what shipment the Government's Exhibit marked for identification as Exhibit 2 covers?

A It covers airway bill 44924740.

Q Does your examination of the Government's Exhibit 2 indicate the name of the consignee?

A Amparo Pelaez de Garces.

Q Can you state from your examination of the Government's Exhibit 2 whether an arrival notice was in fact sent to cover this shipment?

A Yes. An arrival notice was sent on September 6, 1974.

Q Mr. Bebel, does Air France have any address for the consignee of this shipment other than the address which appears on the face of the airway bill?

A No sir.

Q Does Air France have any telephone number for the consignee of this shipment?

A No sir.

Q Mr. Bebel, did you check in order to determine whether the arrival notice was returned by the postal service?

A We did check but it was not returned.

Q It was not returned to Air France?

A No.

Q Mr. Bebel, I am handing you a third document. Can you identify this as a document used in the ordinary course of Air France's cargo operations?

A Yes. It is an arrival notice.

Q Is this the form of arrival notice used by Air France during the entire month of September of this year?

A Yes, it is.

MR. BREWSTER: I offer this document for identification.

THE CLERK: Document marked for identification as Government's Exhibit 3.

(So marked.)

MR. BREWSTER: I offer Government's Exhibits marked for identification as Exhibits 1, 2 and 3 in evidence.

THE CLERK: Government's Exhibits 1, 2 and 3 previously marked for identification marked in evidence.

(So marked.)

MR. KIMELMAN: Your Honor, may we have Mr. Bonozo's statement for the record that he has no objection to these exhibits?

THE COURT: If he does not say anything, he does not have an objection, and he has not said anything.

MR. BREWSTER: Your Honor, may I pass the Government's Exhibits 1, 2 and 3 to the jury?

THE COURT: They will see that later. You have been all through it.

Carry on with your questioning.

BY MR. BREWSTER:

Q Mr. Bebel, I'd like to put the Government's three exhibits before you for one or two more questions.

Turning to the airway bill, Mr. Bebel, can you determine from the airway bill how much freight was prepaid to Air France in connection with the shipment?

A The amount of money?

Q The amount of money.

A $156.51.

Q That's U.S. dollars?

A U.S. dollars.

Q Mr. Bebel, from examining the tally sheet -- the Government's Exhibit 2 -- can you determine where the shipment was held in storage by Air France on arrival?

A Yes. It was stored in Bin 99. This is big boxes that we put and put the freight in and we store on shelves.

Q Could you tell us what building Bin 99 is located in?

A Building 83 at Kennedy Airport.

Q This is an Air France building 83?

A Yes.

Q Was this shipment under Air France's custody in Bin 99 from the time of arrival?

A Yes.

Q Until released?

A Until released. Always in Air France's custody. This is a bonded warehouse, so it's in our custody, yes.

MR. BREWSTER: Thank you very much, Mr.Bebel. I have no further questions, your Honor.

THE COURT: Any questions?

MR. BEZOZO: No cross-examination.

THE COURT: No questions.

Step down. Thank you.

MR. KIMELMAN: Your Honor, the Government would request a five-minute recess to bring some exhibits down and its next witness.

THE COURT: All right. Five-minute recess.

(The following occurred in the absence of the jury.)

THE COURT: All right, gentlemen.

(Recess taken.)

(Jury entered at 4:10 p.m. and the following occurred before the jury.)

THE COURT: All right, you may proceed.

MR. KIMELMAN: The Goverment calls Thomas Leippert.

T H O M A S L E I P P E R T, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KIMELMAN:

Q Sir, by whom are you employed?

A United States Customs Service.

Q In what capacity?

A Senior Customs Inspector.

Q How long have you been with the U.S. Customs Service?

A Fifteen years; ten years as an inspector.

Q What are your general duties as a Customs inspector?

A The normal function of a United States Customs inspector is to enforce the Tariff Act of the United States and enforce the related laws that we are responsible for.

Q Were you so employed on the 9th of September, 1974?

A Yes.

Q Were you part of any special duty assignment

for that day?

A Yes. I was part of an intensified Customs team used to intercept narcotics, contraband coming into the United States.

Q As part of your duties on that day did you have occasion to go to an Air France cargo building?

A Yes.

Q Do you recall what building that was?

A Cargo Building 83 at JFK.

Q Did you go there for any specific purpose?

A We had been alerted, the Customs enforcement team, that there was a possible shipment there that might have contained narcotics and we were requested to go into the Air France warehouse to make this determination.

Q When you went into the Air France cargo building did you have any documentation with you?

A Yes, sir, we had copies of the air waybill and an airline tally.

Q Inspector Leippert, I show you what has been marked as Government's Exhibit 1 in evidence and I ask you if you can identify it.

A Yes, sir. This is the Air France air waybill pertaining to that particular shipment.

Q Did you go to a certain portion of that warehouse

on the 9th of September, 1974?

A We went to the location where the freight was alleged to be, yes.

Q When you got to that location were you able to identify certain goods as being part of the shipment indicated on Government's Exhibit 1?

A Yes, sir.

Q And did you examine those goods?

A Yes, we did.

Q How could you tell that the particular goods that you examined were the same goods mentioned in this air waybill, Government's Exhibit 1?

A Well, the procedure on cargo is they assign an air waybill number to shipment of freight coming into the United States and this number will be on the air waybill of lading and also attached to the packages of freight itself.

Q You were able to locate --

A The two pieces?

Q Yes, indicated on this air waybill; is that correct?

A Yes.

Q When you got to these two pieces what did you do?

A We made a determination that it was the freight

we were looking for and then we proceeded to open the two pieces for examination.

Q What was the outer covering of these two pieces?

A They were two wooden crates.

Q Approximately what size, if you recall?

A I estimate one was about six feet long and about three feet high and the other package was a long rectangular package but only about a foot and a half tall and about seven foot wide.

Q And upon opening these packages what did you observe?

A We found in the large crate that there were five headboards individually wrapped in heavy wrapping paper.

Q And in the second crate?

A We found the side pieces that you would normally use on the sides of a bed connecting the footboard to the headboard.

Q After observing the footboards and the headboards what did you do?

A We took the five headboards out of he box and removed the paper and had them inspected by a dog team.

Q When you say inspected by a dog team, what do you mean?

A Customs is employing dogs who have been trained

in sniffing out narcotics and we find it to be useful, and in a shipment of this nature they are able to determine much faster where the narcotics would be concealed.

Q Are these dogs in fact trained to sniff out cocaine?

A Yes, sir.

Q Did you in fact have one or more dogs examine this particular package?

A Yes, sir. We had a dog team, one dog that particular morning, and he acted positive to one of the headboards.

Q After the dog reacted positive to the headboard what action did you take?

A We assumed at that point that that was the headboard that contained the narcotics and we took that particular headboard and started to disassemble it.

Q How did you disassemble it?

A We first -- I will have to give a description of the headboard.

Q All right.

A It was a wood frame headboard that contained a matting, filled material, covered with plastic over the top of the headboard and the first assumption was that the narcotics would be in the area where the plastic and matting

was and we took knives and cut this area open and removed all the ticking and matting material that was in there and found nothing.

Q Was this done in one headboard?

A Yes, the one that the dog reacted to.

Q After finding nothing in the headboard, the matting therein, what did you do?

A We proceeded to drill holes in the head and the base and the top of the wooden headboard.

Q What was the result of this?

A We found nothing.

Q Did that complete your examination of that particular headboard?

A Yes, sir.

Q What did you do next?

A We proceeded to the other four remaining headboards and weighed them to determine if there was a weight differential, assuming that any headboard that contained narcotics would be heavier.

We found a discrepancy of four pounds which we thought would mean that one of them had it. We took the one that was heavier and proceeded to drill into that board also with a negative result.

Q After this second examination was performed,

what did you do?

A By this time it was, it had taken quite a bit of time and it was almost lunchtime and we decided that after lunch we would come back and completely disassemble the remaining three headboards and try to make a determination what it was that the dog reacted to.

Q Did you in fact return in the afternoon?

A Yes. I returned to the Air France warehouse a quarter to one, that afternoon.

Q What did you do when you got there?

A I decided that if I took the headboards and spread them out in the warehouse and possibly let the dog react on an individual basis to each particular headboard we might get a better idea why he reacted to that one that had no narcotics in it.

Q Is this the first time that these headboards had been completely spread out?

A Yes.

Q Did you in fact spread the headboards out?

A We put the five headboards back together and stood them ina high value area there and we did not want them to be available to anyone else, so we stored them there. When I came back I was in the process of removing these three

remaining headboards and placing them around the warehouse and taking one of the headboards I determined there was X's carved in the bottom of the headboard legs.

Q You determined X's. Does that mean you observed X's on the bottom of these headboards?

A On one particular headboard, yes.

Q On one particular headboard?

A One.

Q One on each leg?

A Yes.

Q After discovering the X's carved into this one particular headboard, what did you do?

A I examined the remaining four headboards and determined they had no X's on them. This in turn made me feel this particular headboard deserved a little further attention.

Q Did you examine the headboard with the X's further?

A Yes.

Q How did you proceed?

A I took it into a well-lighted area of Air Frei[illegible] Cargo and looked at it very carefully, and it was at this time I noticed there was a seam running around the outer edge of that particular headboard.

Q When you say a seam, could you explain that a little further?

A A very faint line seemed to run across the outer edge of this particular headboard and attempts had been made to conceal it either through various nicking or sanding or whatever, but it was obvious that there was a piece of wood joined onto the basic part of this headboard.

Q In other words, it appeared at one time the headboard had been taken apart and put back together; is that correct?

A I don't think the headboard had been taken apart. What actually happened I think something had been carved out of the headboard and this piece added on to it afterwards onto a finished headboard.

Q After you noticed the seam what did you do?

A I decided this needed further inspection and took a knife and started to pry this particular seem and it started to give way.

Q As it started to give way, what happened?

A It started to lift up and it could be seen underneath that there was a plastic package of some sort.

Q Could you determine what was inside the package?

A Yes, sir, the package contained some sort of a white chemical substance.

Q After observing this package, what did you do?

A At this point the rest of the Enforcement team was there from the Customs Department and we called the DEA agent in charge of the case.

Q When you say the DEA agent, tell us what DEA means.

A Drug Enforcement Agency.

Q Are they stationed at Kennedy Airport also?

A Yes, sir, they are.

Q Is it your testimony that a call was placed to the Drug Enforcement agents at the airport?

A Yes, sir.

MR. KIMELMAN: With the Court's indulgence I would like to show something to the witness.

THE COURT: You understand the reason this is being shown to you, and I don't know what it is, no more than you do, but you are not to draw any inferences, any presumptions or anything at all as to this defendant. Nothing whatsoever is to be drawn from this. Do you understand that?

As a matter of fact, I don't know why it is being shown at this point. If they want to show it, that is all right with me, but it has nothing to do with us at this point.

MR. KIMELMAN: May the witness come off the witness stand?

THE COURT: He can do that, but I still want to advise the jury it has nothing to do with this defendant at this point, and no presumption, no implications can be derived from looking at it or inferred from it.

Q Now, I first will ask you to examine this wooden piece over here.

I will ask you if you can identify it.

A This particular piece here?

Q Yes, sir.

A This is the outer crate of the shipment.

Q This is the shipment that you examined, is it?

A Yes, sir.

Q How can you determine this is the same outer crate?

A It has the air waybill, Air France, air waybills glued right here.

Q Is that the same, does the same number appear on the shipping crate as the number appearing on the air waybill, Exhibit No. 1 in evidence?

A Yes, sir.

Q I ask that this packaging crate be marked for

identification.

THE COURT: You know matters of identification are not allowed to be shown to the jury. You know that. It is not in evidence and that is not going to go into evidence no matter what he says about it.

MR. KIMELMAN: It is impossible for a witness to identify something unless he sees it.

THE COURT: It is a question for the jury --

MR. KIMELMAN: We can excuse the jury.

THE COURT: I don't think you should have uncovered it unless you have a connection between that and this defendant.

It is nothing, a matter of identification never goes before a jury and not even a judge looks at it. I don't even look at it. Evidence is something that connects the principals with the issues in the case, related to the items to be proven.

At this point identification means nothing, merely indirectly to show that something was proposed before the Court to keep the record straight. I suggest you take it and put it over there at this point. The jury has no right to see it.

MR. KIMELMAN: I will abide by the Court's instruction.

THE COURT: Cover it up and mark it for identification. Cover it up.

MR. KIMELMAN: I request a sidebar.

THE COURT: I will give you a sidebar.

(A sidebar discussion was held out of the hearing of the jury as follows.)

THE COURT: This offer is premature.

MR. KIMELMAN: The Government's Exhibit 1 in evidence identified these goods that I propose to show as the goods that were imported into this country and number two, as being consigned to this particular defendant.

THE COURT: You don't need that to show it is consigned. It is premature. That does not presume knowledge that she --

MR. KIMELMAN: It shows at this point that it is consigned and of course --

THE COURT: That is all. Tell them it is consigned.

MR. KIMELMAN: With the limiting instruction --

THE COURT: He is not going to show he took it apart and that is what he found.

MR. KIMELMAN: It is important for the Government's case for this witness to put this into evidence

to show that this is the merchandise that was in fact brought into the country and consigned to this defendant.

If the Government cannot put the beds into evidence, how --

THE COURT: So you put the bed in evidence but you can't show, you must show she knew what was inside this consignment. She signed for a bed and you cannot do that by implication.

MR. KIMELMAN: The Government should be allowed to show --

THE COURT: Put it together again and show how it came in.

MR. KIMELMAN: That is what we are attempting to do.

THE COURT: You should have done it before you brought it in.

MR. KIMELMAN: If I may have some lead from the Court --

THE COURT: I do not give any leads. I do not get involved in cases.

MR. KIMELMAN: What is your objection?

THE COURT: The jury has no right to see anything that is for identification. You had no right to

unfold it or take the sheet off it.

MR. KIMELMAN: If the Government now wishes to offer into evidence after marking the five beds and the packaging crate as being the headboards and the packaging crate that this Customs inspector identified and searched and that he found the cocaine on that day, we will offer them in evidence.

THE COURT: It still does not have anything to do with this defendant.

MR. KIMELMAN: They were delivered to this defendant.

THE COURT: Will you concede that the bed was consigned to her?

Will you concede there was a bed consigned to her?

MR. KIMELMAN: That is not up to me.

THE COURT: All right, then you have a bill of lading and this is the bed you say was consigned.

MR. KIMELMAN: And he just identified it. I would like to offer it in evidence.

THE COURT: Put it together.

MR. KIMELMAN: Put it together and then what?

THE COURT: I don't know. I didn't take it apart.

MR. KIMELMAN: It is not taken apart.

THE COURT: If they are not taken apart -- all right, let's proceed.

MR. KIMELMAN: They were taken out of the crate but those are the five headboards.

(Continued on next page)

MR. KIMELMAN: Is this marked for identification.

THE CLERK: No. The wanted.

MR. KIMELMAN: Your Honor, at this time the Government would offer into evidence the five headboards and outside package crate that this witness has testified to.

THE COURT: Any objection.

MR. BEZOZO: No objection.

THE COURT: All right, no objection.

MR. KIMELMAN: Thank you.

May I proceed.

THE COURT: Yes.

Q Now, Inspector Lieppert, you said you were able to identify this crate because there is now a bill printed on the outside of the crate; is that correct, sir?

A Yes, sir.

Q That corresponds with Government's Exhibit 1 in evidence; is that correct?

A Yes, sir.

Q I ask you to look at those articles here and I ask you if you can identify them?

MR. KIMELMAN: Should I know how they're marked?

THE CLERK: Yes, right away.

A Yes, sir, those are the five headboards in the

original shipment.

Q Are those in fact the five headboards that you examined on the night of September 4th, 1974.

A Yes, sir.

THE CLERK: One product crate marked in evidence as Government Exhibit 4 and 5, headboards marked as Government's Exhibit 5, 6, 7 and 8 and 9, I believe it is.

MR. KIMELMAN: Right.

THE CLERK: Nine.

Q Now, Inspector Lieppert, I ask you to examine Government Exhibit 5 through 9 and identify for us the exhibit in which you saw this plastic package.

A This is the one, number nine.

Q You are indicating Government Exhibit 9 in evidence; is that correct?

A Yes, sir.

Q Could you tell us how you identified this particular headboard, Government Exhibit 9 as the headboard in which this package is observed?

A Well, this is the one that has the initials [illegible] on them originally.

Q Is there an x on the --

A Yes, sir.

Q Also, observe an X on the left -

A Yes.

Q Now, would the headboard in front of you, would you show the jury exactly how you proceeded to opening, showing the seam in which you testified before?

A Again, running down the entire periphery of this headboard, is this seam. At that time, it was almost impossible to observe because it blends in very well with the headboard. But having seen what I thought was a seam, I started to work my knife into this area here as it separated and started to move out, and as it moved out, when you got down to about the left in here, you could determine there was plastic packages inside containing the white chemical substance. At that point, I stopped the examination.

Q Now, could you explain to the jury what the splits in the material are?

A Originally we thought this would be the ideal area for the place to hide narcotics, and we had emptied all of those out originally, looking for narcotics and found none.

THE FOREMAN: He can't see it.

A This was all filled with a picking or matting substance.

Q Now, when you first observed this [illegible], do you recall where in Government Exhibit 9?

A It was on this side, here, sir.

Q Was it inside the wooden portion of the headboard?

A Yes, sir.

Q Take the stand.

Is it your testimony that this seam was not at first readily observable to you?

A It was not.

Q Now, you testified that Drug Enforcement Administration Agents at Kennedy were properly notified. Did an agent of that Agency respond to the front of Building 83?

A Yes, sir.

Q Do you know that agent?

A Yes, sir. Agent Sharkey.

Q When Agent Sharkey arrived at Cardinal Building 83 what then occurred?

A He authorized us to completely open up the headboard and determine the quantity of narcotics, what we thought was narcotics, in the headboard. Also, to run a field test and make a determination as to what the chemical substance really was.

Q And did you proceed, then to open up the rest of the particular headboard.

A Yes, sir, we did.

Q How did you do that?

A By expanding on the seam that I had started to open up with my knife with a screwdriver and hammer.

Q What did you observe upon expanding this seam and opening up the headboard?

A There is a carved area winding around the wooden frame of that particular headboard, in which there were 10 packages, plastic packages containing a white chemical substan

Q Could you describe what those packages looked like?

A They were flattened out to fit into the contours of the particular hiding place. They were in packages rectangle in shape.

Q And each package contained what to your observation?

A A white chemical substance.

Q And was a count made of the packages found inside of the headboard, Government Exhibit 9?

A Yes, sir.

Q How many packages were taken from [illegible] Exhibit 9?

A There were ten packages removed.

Q Now, were those, did those packages contain any [illegible]

A With just a piece of number, type on each one of those packages with numbers on them.

Q Those numbers were already on the packages when you took them out?

A Yes, sir, they were.

Q Upon removing those packages from Government Exhibit 9, what did you do then?

A We ran a chemical field test to determine what the chemical substance was.

Q Would you explain to the Court and Ladies and Gentlemen of the jury, what a field test is?

A We have chemical kits that we carry around with us that can give us an instant determination on anything that we suspect to be narcotic in origin. By mixing the substance that we find in this particular vial like tube, we can break other -- tubes that's inside of it. Get a chemical reaction by the color; we know, if we have a narcotic or not.

Q And upon performing this field test, what determination did you make as to the substance contained in the packages found in Government's Exhibit 9?

A It proved positive against the cocaine test.

Q Now, after you performed this field test, what did you do with those packages?

A Well, we gave them to the DEA Agent [illegible].

Q Did Agent Sharkey any receipt for those packages?

A Yes, sir, he did, sir.

Q At that point in time, Agent Sharkey had the custody of all the packages; is that correct?

A Yes, sir.

(Continued on next page)

Lieppert - d - cr. 31

Q Did you do anything to these packages in the way of identifying them?

A Yes, sir, I initialed them.

Q Did you in fact initial each of the packages found?

A Yes, sir.

MR. KIMELMAN: Your Honor, I ask those be marked for identification; ten packages.

Q While we're waiting, Inspector Lieppert, for these exhibits to be marked. You have been a Customs inspector for how long?

A Ten years, sir.

Q Have you an occasion to -- strike that.

In those ten years about how many pieces of cargo have you examined?

A I would have no way of estimating, but tens of thousands.

Q Have you had occasion in those ten years in examining those tens of thousands of pieces of cargo, on prior occasions find merchandise or drugs hidden inside pieces of cargo?

A Yes, sir.

Q On approximately how many occasions have you

A At least five instances that I can remember, sir.

Q Now, sir, based on your experience, how would you characterize the attempted smuggling in this case?

A It was an excellent job, sir.

Q Now, sir, as I hand you these exhibits I ask you in the interest of saving time to examine each exhibit to determine if you can identify them.

THE CLERK: Articles marked for identification as Government Exhibit 10 through 10I.

Q Now, sir, I ask you to complete your examination of Government Exhibits 10 through 10I and I ask you if you can identify those exhibits.

A Yes, sir.

Q And could you tell us how you can identify those particular exhibits.

A On the back in red is my initials.

Q Is that your initials appearing on each of those exhibits?

A Yes, sir.

Q Are those in fact the bags that you removed from Government Exhibit 9 in evidence?

A Yes, sir, they are.

would offer Government Exhibit 10 through 10I in evidence.

MR. BEZOZO: No objectio

THE COURT: No objection.

THE CLERK: Government's Exhibit 10 through 10I previously marked for identification, marked in evidence.

Q Now, sir, as part of your duties as Customs inspector and part of your experience inthe last 15 years on the job, have you had occasion to examine passports?

A Yes, sir.

Q Do those include passports of individuals coming from all over the world?

A Yes, sir.

Q And during the course of your employment, how many such passports have you in fact examined?

A Thousands.

Q And are you familiar with the markings found in passports?

A Generally, yes, sir.

Q Are you familiar with the stamps that are used by the various countries to indicate exits and entries out of that country?

A Yes, sir.

Q You, of course, are familiar with the procedures and stamps used by the United States?

A Yes, sir, I am.

MR. KIMELMAN: Your Honor, Mr. Bezozo and I are entering into a stipulation that this exhibit, which I would mark for identification; may it be marked, your Honor?

THE CLERK: Document marked for identification as Government Exhibit 11.

MR. KIMELMAN: Your Honor, Mr. Bezozo and I have entered into a stipulation that Government Exhibit 11 for identification, is the true passport of the defendant Amparo Pelaez de Garces and that of her two children.

THE CLERK: All right.

MR. KIMELMAN: I would then offer it into evidence, your Honor.

THE COURT: Any objection?

MR. BEZOZO: No objection.

THE CLERK: Government Exhibit 11 previously marked for identification, received in evidence.

Q Now, Inspector Lieppert, I show you what's been marked as Government Exhibit 11 in evidence and I ask you to examine it and could you tell us what it is.

A It's a passport issued by the Republic of Colombia to Miss Pelaez de Garces.

Q Now, sir, I direct your attention to page 15 of Government Exhibit 11 in evidence and I ask you are there any stamps appearing on that page.

A Yes, sir, there are.

Q And based on your experience, sir, are you able to identify what type of stamp that is?

A There is an immigration stamp put on here by the Republic of Colombia showing on the 23rd of June someone entered Colombia and on this passport --

Q On that passport?

A Yes, sir.

Q Does it indicate whether the holder of the passport, anybody else entered at that time?

A There is another stamp on here in Spanish. It doesn't name other people, but as to what it actually says I'm not too sure.

Q But it indicates that somebody using this passport entered into Colombia on the 23rd of June 1973?

A Yes, sir.

Q Now, I also direct your attention to page 16 of Government Exhibit 11 in evidence and I ask you if any [illegible] appear on that page.

A Yes, sir.

Q And --

A There is.

Q Could you tell us what those stamps indicate?

A There is an immigration stamp placed on here by the Republic of Colombia and also showing that someone left carrying this passport on the 25th of August 1974.

Q Does it indicate the port of exit or place of exit?

A Yes, it does, Medellin.

Q I also direct your attention to page 17 of Government Exhibit 11 in evidence and I ask you, if a stamp appears on that page.

A On page 17 are two stamps, sir. One is issued by our immigration service at the Port of Miami showing that someone carrying this passport entered the United States on August 25.

Q That's the same day that someone left Colombia?

A Yes, sir.

Q Now, I also direct your attention to page 17 and ask you if a second stamp appears on that page.

A Yes, sir.

Q And could you tell us what that stamp [illegible]

A That's an immigration stamp, again [illegible]

Republic of Colombia showing that someone left on the 3rd of September 1974, again from Medellin, leaving the country using this passport.

Q Finally, I direct your attention to page 18 of Government Exhibit 11 in evidence and I ask you if a stamp appears there.

A Yes, sir. Another United States Immigration stamp issued at the Port of Miami on September 3rd, showing that someone returned using this passport.

Q So, in other words, someone using this passport exited Colombia and arrived in Miami on August 23rd, 25.

A 25, sir.

Q Someone exited Colombia and entered Miami on the 3rd of September; is that correct?

A Yes.

Q Now, finally, if you're familiar with the general custom and practices and procedures; is that correct?

A Yes, sir.

Q Are you familiar with the requirements of duty that is paid on items imported to the United States generally?

A Yes, sir.

Q Is there some type of regulation that applies when an item that is to be imported into the United States

exceeds a certain dollar value as to how that item is to be handled to get through Customs?

A If it's a commercial shipment, shipment that's going to be used as samples it would require a Customs broker if the value of the shipment was in excess of $250.

Q If the value of the shipment is less than $250.

A The inspector is impowered to collect the duty at that time, sir.

MR. KIMELMAN: I have no further questions.

MR. BEZOZO: No questions.

THE COURT: No questions? Step down.

(The witness is excused.)

MR. KIMELMAN: Your Honor, in view of the lateness of the hour, the Government requests an adjournment for hte day to proceed tomorrow morning.

THE COURT: All right. Tomorrow morning at 10:30.

(The jury is excused at 4:50 pm.)

* * * *

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-against- : 74-CR-579

AMPARO PELAEZ DE GARCES, :

Defendant. :

----------x

United States Courthouse
Brooklyn, New York

November 14, 1974
10:00 o'clock A.M.

B e f o r e :

HONORABLE MARK A. COSTANTINO, U.S.D.J.

GENE RUDOLPH
OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: STEVEN KIMELMAN, ESQ.
Assistant U.S. Attorney

-and-

RICHARD BREWSTER, ESQ.
Assistant U.S. Attorney

STEVEN BEZOZO, ESQ.
Attorney for Defendant

(The following occurred in the absence of the jury.)

THE COURT: Good morning.

MR. KIMELMAN: Good morning, your Honor.

I have some 3500 material that I would like marked and which I will distribute to Mr. Bezozo before the next witness comes on.

THE COURT: All right. The Clerk will be right here.

MR. KIMELMAN: Mark this 3500 material, please.

THE CLERK: Yes.

Grand jury minutes dated September 19, 1974 marked as 3500 material, Government's Exhibit 12.

Investigation report marked as 3500 material, Government's Exhibit 13.

(So marked.)

MR. KIMELMAN: May the record reflect that I am turning over to Mr. Bezozo the Government's Exhibits 3500-12 and 13.

THE COURT: Yes.

Mr. Bezozo, would it be better if -your client sat on the other side of the table so she wouldn't look uncomfortable looking at the jury? This way if you want to consult with her, you can. As she is sitting now, we will have an objection from the Court of Appeals

that you never talked to her during the trial. Smile at her. Do something, but talk to her, okay?

MR. BEZOZO: Yes, your Honor.

THE COURT: I just read an opinion this morning where one of the complaints was that during the trial the defense attorney never had a conversation with the defendant. It was not taken too seriously but they said it could become a situation that might shock the conscience of the Court.

All right. Everything I learn by reading these cases that come down, if it's for one side or the other, I will let you know. I do not hold you in the dark, because I read all the cases every day.

Bring the jury in now, please.

If you cannot hear what they are saying, I will ask them to talk louder. Just let me know.

(Jury present.)

THE COURT: All right. Good morning, everyone.

Ready to start?

MR. KIMELMAN: Your Honor, the Government calls Thomas Sharkey.

THOMAS SHARKEY, called as a witness, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KIMELMAN:

Q Sir, by whom are you employed?

A U.S. Government, Department of Justice, the Drug Enforcement Administration.

Q In what capacity?

A I'm a Special Agent.

Q How long have you been a Special Agent, sir?

A Approximately three and a half years.

Q Were you employed on the 9th of September, 1974?

A Yes, I was.

Q Did you receive a phone call on that morning?

A Yes, I did.

Q As a result of that phone call, did you proceed anywhere?

A Yes, I did.

Q Would you tell the Court where you proceeded?

A I received a phone call from the U.S. Customs Service at Air France cargo, and I proceeded -- after I received the phone call, I proceeded to the Air France cargo building located at JFK Airport.

Q Do you recall approximately what time that was?

A When I arrived at the Air France cargo building, it was approximately 1:30 in the afternoon.

Q When you got to the Air France cargo building what did you do?

A When I arrived at the cargo building, I checked in with the Customs inspectors and I witnessed a thorough examination of some cargo that was in the room.

Q Who else was present, if you recall?

A As I recall, it was a Customs Inspector Lieppert, a Customs Inspectress Berlinson, a Custom Inspector Brodman, and I think one or two other inspectors. I don't know their names.

Q The cargo that was being examined, could you describe that for us?

A Yes. It was a crate of Colombian furniture, particularly bedboard type furniture, headboards.

Q Do you recall how many bedboards there were?

A There were five.

(continued next page)

DIRECT EXAMINATION

BY MR. KIMELMAN: (Cont.)

Q And could you describe for us the examination that took place?

A Yes. It was a complete, thorough examination of all the headboards, the slats and the sections of wood were drilled into, were disassembled almost completely.

Q Was anything found as a result of this examination?

A Yes.

Q Could you tell the Court and jury what that was?

A We found secreted in one of the headboards, throughout one of the headboards approximately 1664 grams of cocaine.

Q And how -- in what manner was that secreted?

A It was secreted, -- it was contained within ten separate white plastic bags,tubular in shape. It was secreted throughout the wooden -- inside of one of the wooden headboards.

Q And do you recall how many plastic bags there were?

A There were ten.

Q And do these plastic bags have any type of

special markings on them?

A Yes.

Q Could you tell the Court and jury what those markings were?

A All ten bags had various numbers, from one to three, taped onto each bag, with the numbers 1, 2 or 3 and it looked to me like it was white adhesive type or bandage type tape.

Q In other words, each bag had one of the three numbers?

A Yes.

Q Either 1, 2 or 3?

A That's correct.

MR. KIMELMAN: All right.

I beg the Court's indulgence, I'd like to show the witness an exhibit.

THE COURT: Let him walk down there. We've all seen it. Go down and see if that's the exhibit. It is easier than hauling that thing around the courtroom.

BY MR. KIMELMAN:

Q Special Agent Sharkey, I ask you to look at Government's Exhibits 8 through 9 and ask you if you can identify which of those exhibits was the one in which the

substance was found?

A Yes, I can.

THE COURT: All right.

Is there anything on it by which you can identify it?

THE WITNESS: Yes, your Honor.

THE COURT: Tell us what it is.

THE WITNESS: A carved X on the bottom of the leg.

THE COURT: All right.

MR. KIMELMAN: May the record reflect that the witness has identified Government's Exhibit 9 in evidence.

THE COURT: All right.

You may step back here.

BY MR. KIMELMAN:

Q After this -- these bags were removed from Government's Exhibit 9, what was done with it, if anything?

A I transported them to my office, to John F. Kennedy District Office and placed them in the -- our vault for safekeeping. Excuse me. I should say right prior to that I marked them with my initials and then transported them to the vault.

Q Sir, I show you what's been marked in

evidence as Government's Exhibits 10 through 10-I.

I ask you if you can identify it?

A Yes, I can.

Q Would you tell the Court how you identify those exhibits?

A Yes.

I had in a red-type marking pencil, I placed my initials on each bag, which I see right here and also they have the numbers that I explained a little earlier on them.

Q Would you take one of those exhibits out and show us what you mean by the numbers?

A The numbers? There is the number.

MR. KIMELMAN: Your Honor, may I show this to the jury?

THE COURT: No. You don't have to show them that. He identifies it.

MR. KIMELMAN: No, your Honor. The number that was inside the bag.

THE COURT: All right. They'll take your word for it. I don't like cocaine passed around. I don't like heroin to be passed around. As a matter of fact, I don't even like it in my courtroom. It won't be in here much longer. It will be taken out

pretty soon.

It serves no purpose whatsoever once it's in evidence. No purpose. You have a good idea what it is, don't you now? White powder in the bag? It doesn't have to be circulated. In addition, do you intend to call a chemist, by any chance?

MR. KIMELMAN: Your Honor, the stipulation will be entered into.

THE COURT: That's all right. It will be stipulated if he were called, that the substance in the bag would be cocaine?

MR. KIMELMAN: That is correct.

THE COURT: Okay.

So we don't need a chemist. It is cocaine. Okay. All right.

BY MR. KIMELMAN:

Q Now, sir, did you do anything in relation to these exhibits on the 11th of September, 1974?

A Yes.

THE COURT: I didn't hear you. Sorry.

Q Did you do anything in relation to these exhibits on the 11th of September, 1974?

A Yes, I did.

Q Would you tell us what you did at that time?

A We secreted a part of the cocaine that was in the ten original bags, approximately 38 -- 38 or 39 grams, put them in a separate smaller sealed -- hermetically sealed plastic bag and I placed it in one of the headboards for a control delivery purpose.

Q Now, could you explain to the Court and jury what a controlled delivery is?

A Yes.

We take out the majority of the controlled substance or the narcotic, so it doesn't get lost, what have you, in the street and we replace it with just a sample of what had come in and we then resecrete it in one of the headboards or in one of the articles and then we wait for either a person to come up to the airport to pick up their merchandise or, two, when we go on the delivery of the merchandise to the person, to the consignee of it.

Q Now, is there a standard procedure employed by the Drug Enforcement Administration when they learn that some drug is secreted in something?

A Is that a standard procedure? Yes, it is.

Q So in every instance, you remove the majority of the drug and leave -- leaving some of the drug or putting back a small portion of the drug?

lws. A If possible, that's correct, yes.

DIRECT EXAMINATION

BY MR. KIMELMAN: (Cont'd.)

Q And the law enforcemnt purpose is doing that is what? Why do you remove it?

A Why do we remove it?

Q Yes.

A Basically as a safety factor.

Q Safety in the respect that it may be stolen or misplaced?

A Exactly.

Q Was there any attempt by an individual to pick up this merchandise on the 11th of September?

A Yes, there was.

Q Could you describe the circumstances of that to us?

A Yes. A gentleman arrived at the Air France cargo building, which is located in JFK Airport, by the name of Mr. Frank Brea and he arrived in a station wagon and he showed up at the window, at the cargo window, requesting the headboards. He had with him a letter of suthorization authorizing him to pick up the headboards for the consignee.

Q And did he have any other documentation with him, that you know of?

A He had an airway bill, showing the manifest of the headboards.

MR. KIMELMAN: By the way, mark this for identification.

THE CLERK: Document marked for identification as Government's Exhibit 15.

(So marked)

Q Special Agent Sharkey, I show you what's been marked as Government's Exhibit 15 for identification. I ask you if you can identify it?

A Yes, I can.

Q Could you tell us how you can identify that?

A Yes. I see blue initials on it which was the initials we put onit when we made up the sample. For controlled delivery purposes.

Q Is Government's Exhibit 15 for identification the sample that you put back into the furniture for the control delivery?

A That's correct.

MR. KIMELMAN: Your Honor, I would offer Government's Exhibit 15 in evidence.

THE COURT: Any objection?

MR. BEZOZO: No, sir.

THE COURT: No objection.

THE CLERK: Sorry. That should be 14.

Government's Exhibit 14 marked in evidence.

(So marked)

BY MR. KIMELMAN:

Q After Mr. Brea presented those documents at the Air France cargo, what happened?

A I identified myself to him and we introduced him regarding his purpose at the airport.

Q What was the conversation that you had with him?

A The conversation in substance was that he was picking the headboards up to be delivered --

THE COURT: Just a moment. Just a moment. You are not listening now to the conversation. Side bar on this one.

(Side bar follows)

THE COURT: Are you familiar with the federal law on this? You may have a Bruton problem here.

MR. BEZOZO: I'm sorry.

THE COURT: You may have a Brady problem. I don't know which problem. You may have one of the two.

MR. KIMELMAN: Your Honor, there is no Bruton problem because Mr. Brea is not a co-conspirator or

co-defendant on trial. So there will be no Bruton problem.

THE COURT: How about a Brady problem. Inculpatory statements.

MR. KIMELMAN: Your Honor, if I may, there is no inculpatory statements. The testimony that will follow is simply that Mr. Brea was hired by a normal commercial matter by this defendant to pick up the things from the airport.

THE COURT: The man was hired?

MR. KIMELMAN: Yes, sir.

THE COURT: Okay. I just want to make the record.

MR. BEZOZO: Surprised me.

(Side bar ends)

(In open court)

THE COURT: You may answer.

A After I identified myself as an agent with the Drug Enforcement Administration, we asked Mr. Brea what his purpose was to be at the airport. In the Air France cargo section. He related to me that he was there to pick up a consignment of headboards for Amparo Palaez de Garces and deliver them to her. Further interview determined he was acting strictly in the delivery man sense of the word

and had nothing whatsoever to do in fact with the consignment of merchandise.

Q In other words, you questioned him as to whether he knew what was inside.

THE COURT: That's all he could say. He can't say anything else. No other words about it. That's the conversation.

Q After -- did this come at a time when you informed Mr. Brea that you wished him to make this delivery?

A Yes.

Q And would you tell us what you said?

A Yes. After determining that Mr. Brea had nothing whatsoever to do with the consignment of merchandise or what was the contents therein, we asked him that we -- we told him we were going to go along with him and deliver the headboards to the consignee, Miss de Garces.

Q Did he agree to do so?

A Wholeheartedly, sir.

fls.

(Continued on next page.)

BY MR. KIMELMAN:

Q And what was done to effectuate this delivery?

A Well, we placed the headboards in his, I believe it was, 1969 station wagon. He drove. We placed an agent driving with him acting as an undercover type of aid by the name of Special Agent James Castillo, excuse me, Jerry Castillo. We had other agents to surveill the station wagon to the area where he was supposed to deliver the merchandise.

Q Before you placed the merchandise on the station wagon, did you do anything to it?

A Yes.

Q What did you do?

A Myself and my partner marked an X in one of the other headboards on the bottom leg to resemble exactly the one, the X that was marked on the headboard that the cocaine came out of.

Q What was your purpose in doing this?

A Well, the one that was marked -- the original headboard that the cocaine came out of was pretty well dismantled. We tried to put it together as best as possible. But we put the [illegible] we put the headboards upside down so the consignee, if the consignee was looking for the X, she would see the X that we marked.

Q Now, after the headboards were placed on the station wagon, what happened then?

A Well, at first, of course, we had asked Mr. Brea where he was to deliver them and to whom. He answered that he was to deliver them to Amparo Pelaez de Garces. He was to bring them to 9201 Lamont Street.

Q And what borough was that?

A Pardon me?

Q What borough is that?

A That is in Queens. In Elmhurst, Queens.

Q And did agents of the Drug Enforcement Administration and yourself proceed to that vicinity?

A We did.

Q And what did you observe when you arrived at the vicinity?

A When we arrived at the residence, we observed Amparo Pelaez de Garces standing outside of the apartment building. When the station wagon approached the building and her she waved the station wagon -- excuse me -- she [illegible] ction behind the building for the station wagon to go to.

Q And what were you able to observe after that?

A [illegible] the station wagon went down and was temporarily out of my view for a number of seconds.

Then I got out of my car on foot and went adjacent to the 9201 street in the yard where we watched Mr. Brea and Special Agent Castillo approach Miss de Garces and start taking the furniture off the truck.

Q And after the furniture was removed from the truck where was it placed?

When you say truck, you mean station wagon?

A I meant the station wagon. It was placed in the back of the building against the wall, not inside the building wall.

Q How would you describe this building?

A It is a fairly modern, six-story apartment house complex.

Q And after it was placed on the ground what happened? What did you do?

A Well, I observed Special Agent Castillo talking with Mrs. deGarces. Of course I was out of hearing site for a number of minutes. I also observed a piece of paper being handed to her. I observed her signing a piece of paper. Then within the next half minute or so I observed Mr.Castillo reaching in his pocket and place her under arrest.

Q After you observed the defendant in fact placed under arrest, what did you do?

A I immediately got to Mr. Castillo.

Q Did there come a time when this defendant was questioned by agents of the Drug Enforcement Administration, after the arrest?

A Yes.

Q Were you present when those questions were asked?

A Yes, I was.

Q Will you tell us who else was present at that time.

A Yes, Special Agent Jerry Castillo was present.

Q And was there anyone else?

A Mr. Brea.

Q And did you ask the defendant any questions following her arrest?

A Yes, I did. But she spoke -- she didn't speak english. She spoke spanish. So I attempted to ask her some questions through both Agent Castillo and Mr. Brea.

Q In other words, the responses that you got were through Mr. Brea and Mr. Castillo?

A That is correct.

Q Not answering what the responses were, can you tell us what questions you asked?

A Well, prior to any questions that we did ask the defendant, Special Agent Castillo advised the defendant

of her Constitutional rights.

And after this was done --

THE COURT: Is that in english or what?

THE WITNESS: In spanish.

THE COURT: Who advised her in spanish?

THE WITNESS: Agent Castillo.

THE COURT: Did he have a little card --

THE WITNESS: Well, he is spanish-speaking.

THE COURT: Did he have a little card that he read it from?

THE WITNESS: I think he did, sir.

THE COURT: In english and on the reverse side spanish.

BY MR. KIMELMAN:

Q Will you now tell us the questions that you personally asked?

A Well, I asked through Agent Castillo, I wanted to know where the woman lived. What her name was.

THE COURT: Before you get to that, do you know whether or not she responded in spanish that she was willing to answer questions?

THE WITNESS: Yes, as I recall.

THE COURT: As you recall the responses to her Constitutional rights, after that are you willing to

answer questions --

THE WITNESS: From Agent Castillo.

THE COURT: -- From what he told you, your recollection is that she answered?

THE WITNESS: Yes.

THE COURT: This would be subject to connection.

MR. KIMELMAN: Yes. There will be further witnesses.

THE COURT: OK.

You understand that now, because there are certain items that must be followed, certain essential acts to be followed in order to interrogate any person, either prior to arrest or during arrest, as to certain rights that they have under a certain decision of the United States Supreme Court known as the Miranda decision.

BY MR. KIMELMAN:

Q Again I would ask you what are the questions that you asked?

A Well, one of the questions I wanted to know was what her name was, where she lived, and where she had come from just prior to our delivering her headboards.

Q Without telling us the actual responses, were there responses to these questions?

A Well, there were responses, yes.

Q Did you ask her any other questions relating to the actual merchandise that was delivered?

A As I recall, I asked, through Castillo, if they were hers.

Q And did Mr. Brea at any time take part in the interpretation of these questions?

A Yes, he did. As Mr. Brea also spoke spanish, as did Agent Castillo. Mr. Brea didn't actually ask her. He was again acting as another, or as a second interpreter for us. If she would answer anything he would mention what it was in english.

Q In other words, he didn't have his own questions?

A No, he was strictly acting as an interpreter.

MR. KIMELMAN: I have no further questions of this witness, your Honor.

THE COURT: Any questions?

MR. BEZOZO: No, sir.

THE COURT: No questions.

MR. KIMELMAN: I beg the Court's indulgence again. The next witness is waiting in my office. The witness will be right down.

THE COURT: All right, do you want to sit there or do you want to sit inside (addressing jury)?

Well, you can go inside rather than sit there.

(Short recess.)

(continued on next page)

(The following occurred in the absence of the jury.)

THE COURT: All right. Seat the jury, please.

(Jury present.)

THE COURT: All right.

MR. KIMELMAN: Your Honor, the Government calls Frank Brea.

F R A N K B R E A , called as a witness, having first been duly sworn by the Clerk of the Court, took the witness stand and testified as follows:

DIRECT EXAMINATION

BY MR. KIMELMAN:

Q Mr. Brea, by whom are you employed?

A Excursiones Pan Americanas.

Q And that translates as Pan American Excursions?

A Excursions, right.

Q What type of company is that?

A Travel agents and do tours and we got car insurance over there and we pick up packages and deliver packages. All kinds of other things. Pick up place.

Q What are your duties at the travel agency?

A Tour guide, delivery and collate from other agencies.

Q Who else works in the agency?

A At the agency, Mr. Richard Salgado, Ray Hassan

was the president, the owner, and a new secretary we got there now.

Q Was your company hired to pick up some furniture from Air France?

A Yes.

Q In September of this year?

A Yes, sir.

Q Did an individual come to your offices to make arrangements to have this furniture picked up and delivered?

A Yes.

Q Do you recall approximately when this individual came to your offices?

A This was on Thursday, about eleven o'clock, 11:00, 11:30, on September the 5th.

Q Do you recognize the individual who made these arrangements in the courtroom today?

A Yes.

Q Would you indicate that individual to us?

A Yes; Miss Amparo.

Q Would you tell us what she is wearing?

A The polo shirt, like what you call it, the turtleneck shirt, at the table.

THE COURT: Still do not know what she is

wearing. What is she wearing?

BY MR. KIMELMAN:

Q Would you describe the color?

A She's wearing a turtleneck polo shirt.

Q What color is it?

A White.

THE COURT: All right.

MR. KIMELMAN: Your Honor, may the record reflect that the witness has identified the defendant, Amparo Pelaez de Garces?

THE COURT: All right. Identifies the defendant.

Q When this individual, the defendant, came to the agency, did you overhear any conversation that she had with anyone?

A She was talking with Mr. Salgado, who was at my desk, but I didn't hear too much of the conversation.

The only thing, that we supposed to pick up some furniture at the airport.

Q Tell us what you heard her say? Not what Mr. Salgado said, but what you heard the defendant say?

A She said that she was to us to pick up some bed at the airport, if we could do it.

Q Did you observe the defendant give Mr. Salgado

anything?

A Yes, I did.

Q What did you observe?

A She gave him some documents, some papers, and some money. I don't know how much it was.

Q You weren't at that time able to determine exactly what the papers were, how much money she gave?

A No. I didn't see how much money she gave him. I know that she gave him money, but I don't know how much.

Q Sir, do you keep records and receipts of cash received from customers in the travel agency?

A Yes, we do.

Q Are these kept in the ordinary course of your business?

A Excuse me?

Q Are these kept in the ordinary course of your business?

A I still don't understand the question.

Q I'll rephrase it for you.

Is it the normal practice of your business to keep these in a location at the agency?

A Definitely, yes.

Q Have you brought with you any of those records from the travel agency today?

A Yes.

Q Would you show us what you have?

A I have a receipt number. That's Mr. Salgado.

Q Did you take this from the place where the records are normally kept in the travel agency?

A Yes.

MR. KIMELMAN: Mark this for identification.

THE CLERK: Document marked for identification as Government's Exhibit 16.

(So marked.)

BY MR. KIMELMAN:

Q Tell us, Mr. Brea, what Government's Exhibit 16 for identification represents?

A You want me to read what it says?

Q No. Don't read it out loud. Read it to yourself and tell us what it is.

A This is the paper I took from the office when -- that she gave money.

Q Does it indicate on that document how much money was received from this defendant?

A Yes, sir.

Q Could you tell us how much that is?

A Three hundred dollars.

Q Does it have a date on it?

A Yes.

Q Would you tell us what the date is?

A 9/5/74. September 5, '74.

MR. KIMELMAN: Your Honor, I'd offer this into evidence.

THE COURT: Any objection?

MR. BEZOZO: No sir.

THE COURT: No objection.

THE CLERK: Government's Exhibit 16 previously marked for identification marked in evidence.

(So marked.)

BY MR. KIMELMAN:

Q Mr. Brea, did there come a time when you went to Kennedy Airport?

A Yes, sir.

Q Could you tell us the first time you went to Kennedy Airport in connection with this pick-up and delivery?

A Yes, sir. That was on September 6, the following day, when the lady went to the office.

Q Whom did you go with?

A I went with a little kid that lives across the street from the travel agent.

Q How did you get there?

A By car.

Q What type of car was that?

A That was a '69 station wagon, Ford station wagon.

Q Did you have any documents or any other articles with you?

A Yes, sir.

Q Could you tell us what you had with you?

A I got few papers. I have the airway bill from Air France and a few other papers which I didn't look over, figured that was for -- for the people in Air France to look over and tell me.

Q Did you have any money with you?

A Yes.

Q How much did you have with you?

A Three hundred dollars.

Q Three hundred dollars?

A Yes.

Q Where did you get the money and documents from?

A Mr. Richard Salgado.

Q I show you what's been marked as Government's Exhibit 1 in evidence and I ask you if you recognize it?

A Yes, sir.

Q Could you tell us how you recognize it?

A Yes. This is Air France and got her name on it. It's two pieces, sample.

Q Does that represent a copy of the airway bill that you had with you on that day?

A Yes. They got about two or three. I don't know of these they had. A lot of papers.

MR. KIMELMAN: Mark this, please.

THE CLERK: Document marked for identification as Government's Exhibit 17.

(So marked.)

BY MR. KIMELMAN:

Q Mr. Brea, I show you what's been marked as Government's Exhibit 17 for identification and I ask you if you can identify that document?

A Yes, sir.

Q Did you have that document with you on the late, September 6th, 1974?

A Yes, sir, I did.

Q Was that document also given to you by Mr. Salgado?

A Yes.

Q With the other documents?

A Yes.

MR. KIMELMAN: I would offer this into evidence.

THE COURT: Show it to defense counsel.

MR. KIMELMAN: Yes, sir. He has seen it before.

your Honor.

THE COURT: Any objection?

MR. BEZOZO: No, sir.

THE COURT: All right. No objection.

THE CLERK: Government's Exhibit 17 previously marked for identification marked in evidence.

(So marked.)

(continued on next page)

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DIRECT EXAMINATION

BY MR. KIMELMAN (Cont'd):

Q Now, Mr. Brea, do you speak Spanish as well as English?

A Yes, sir. Better.

Q Better? And is Spanish in fact your native language?

A Right.

Q And you are, of course, able to read and write the Spanish language?

A Yes.

Q I ask you to look at Government's Exhibit 17 in Evidence and could you tell us what that is?

A You want me to translate it?

Q Well, first tell us, translate it to yourself and tell us in English what it is?

A Okay.

"Mrs. Amparo Pelaez de Garces:

"Value of five beds, Louis XI style, are 10,00 pesos. The value of the unit is 2,000 pesos. Equiv lent $500."

Q Is there writing on the top of

A Yes, sir. $10,000.

Q No. The printed on the top?

A A-r-t-e-s-a-n-a-s C-o-l-o-n-i-a-l-e-s.

Q And how does that -- what does that name translate to?

A That is --

Q If --

A Yes. It's a name of the house who sells the furniture.

Q All right.

A Like a furniture store name.

Q Is there any stamp on this exhibit indicating whether the merchandise referred to has been paid or not?

A Paid 10,000 pesos. It was paid on Carrera 52, the name of the street, Carrera, C-a-r-r-e-r-a 52-22. Telephone 41-48-90 and 41-35-53.

Q That is the address and the phone number of the store; is that correct?

A Right.

Q I ask you to examine the stamp that I'm indicating by my finger and would you tell us what that says.

A That's cancelled.

Q What does that mean?

A That was cancelled. That was paid.

Q That indicates that the merchandise referred to on that receipt was paid for?

A Right.

Q And you testified that the persons name on this is Senora Amparo Pelaez de Garces; is that correct?

A Yes, I did.

Q Now, when you got to Kennedy Airport, where did you go?

A I went to Air France cargo.

Q When you got to Air France cargo, what happened there?

A I gave in the documents to one of the Air France officer, one of the representatives at the counter.

Q And were you able to get the merchandise?

A No, sir.

Q Would you tell us why not?

A The gentleman looked over the -- some of the papers and then he spoke to a custom officer and they step outside and they say something.

They came back to me and they said that I needed to go with the owner of the furniture. She got to get a broker or a furniture -- the furniture wasn't going to be delivered.

Q In other words, you had to get -- you had to give them some indication as to where this furniture was to be delivered to; is that correct?

Yes. In order to release it for samples. Something like that.

Q Were you able in fact to pick up the furniture yourself?

A Right. Right. To pick it up myself?

Q Yes.

A She had to go herself.

Q So you were informed that the individual was required to go to pick it up herself?

A Right. They wouldn't give it to me.

Q After you were unable to pick up the merchandise, what did you do?

A Went back to the office and I explained to Salgado wasn't going to be able to pick it up if she didn't go herself.

Q Did there come a time whe the defendant came to the store that afternoon?

A Yes.

Q And did you have a conversation with her at that time?

A Yes. She was asking me, you know, what happened and I told. What she needs to get the furniture.

Q And did you tell her?

A I told her that she had to go herself. She

needs a broker and they had to check the furniture -- made this -- they had to make something on the furniture, check it out.

Q Did you tell her you needed some proof as to where the furniture is to go?

A Yes, I did.

THE COURT: I don't think you should lead the witness at this time. Absolutely not. No leading questions.

MR. KIMELMAN: Yes, sir.

Q And as a result of this conversation, was anything done to effectuate these purposes?

A Yes, sir.

Q And what was done?

A She gave me a letter of power. She sent a letter of power

THE COURT: Excuse me. A letter of what?

THE WITNESS: Of power.

THE COURT: A letter of power?

THE WITNESS: Yes.

THE COURT: [illegible]

[illegible] or letter of power?

THE WITNESS: Power.

THE COURT: [illegible]

if she signed this letter for you?

THE WITNESS: Yes, sir.

THE COURT: All right.

BY MR. KIMELMAN:

Q And did you witness her signing this?

A Yes, sir.

Q And you just testified that your boss notarized the signature; is that correct?

A Right.

MR. KIMELMAN: Mark this for identification.

THE CLERK: Document marked for identification as Government's Exhibit 18.

(So marked.)

BY MR. KIMELMAN:

Q I show you what has been marked as Government's Exhibit 18 for Identification, and I ask you if you can identify it?

A Yes, I do.

Q Could you tell us how you can identify it?

A Mr. Ray Hassan's signature, H-a-s-s-a-n.

Q And was that the letter that was in fact given to you on the 6th of September, 1974?

A Yes.

THE COURT: What was that letter?

that typed in your office?

THE WITNESS: Yes, sir.

THE COURT: Was it typed in Spanish or --

THE WITNESS: English.

THE COURT: Typed in English?

THE WITNESS: Yes, sir.

THE COURT: Did you read it to her?

THE WITNESS: No. Mr. Salgado did.

THE COURT: You read it in English and Spanish?

THE WITNESS: Right.

THE COURT: Did she read it in English herself, do you know?

THE WITNESS: I don't think so. I don't know.

THE COURT: You don't know. Okay.

BY MR. KIMELMAN:

Q But you witnessed her signing the paper; is that correct?

A Yes.

MR. KIMELMAN: Your Honor, I'd offer Government Exhibit 18 in Evidence.

THE COURT: Mr. Bezozo?

MR. BEZOZO: Excuse me one second.

THE COURT: Surely.

MR. BEZOZO: Your Honor, the only thing I'll

object to, the defendant did sign this but she didn't know what it was --

THE COURT: I'll sustain the objection at this time for a better foundation.

I'll sustain it. Improper foundation for that letter.

MR. KIMELMAN: Your Honor, may I have a side-bar?

(Side-bar follows.)

MR. KIMELMAN: If I may, your Honor?

THE COURT: I don't want to see it.

MR. KIMELMAN: If I may, your Honor --

THE COURT: I don't want to know anything that is in it. I want to know your argument about signing something you can't read.

MR. KIMELMAN: Your Honor, the fact is that this defendant witnessed the defendant's signing the paper.

THE COURT: He's not objecting to the signature. He's objecting to the contents.

MR. KIMELMAN: Your Honor, this is perfectly proper cross-examination.

THE COURT: No. It is too late.

MR. KIMELMAN: On voir dire? If I may, your

Honor, the Government is only offering this letter for the purpose that that in fact is the defendant's signature and that she signed it, whether she knew what she was signing or not is a matter of inference that can be drawn by the Jury.

THE COURT: Not when it goes to the crux of the case.

I'll sustain the objection at this point. Better foundation.

(End of side-bar.)

THE COURT: The objection is still sustained at this point. Not as to the signature. Sustained as to the contents of the letter unless there is better proof. A foundation is not proper.

BY MR. KIMELMAN:

Q Now, after --

THE COURT: I don't know what it says. I want you to know that. I did not look at it.

Q After you took possession of this letter, was there any further discussion about determining -- strike that.

THE COURT: What else was said if anything after this?

From here on there will be no leading.

What else was said, if anything, that you can recall?

THE WITNESS: After that, if we could get the -- a letter from a furniture store in order to bring the furniture over there to pay the taxes, the name of the furniture store.

BY MR. KIMELMAN:

Q Did you make any attempt to get such a letter?

A Yes, I did.

Q Could you tell us what you did?

A I went to a couple of my friends but they weren't there and I was sent by Mr. Hassan to a friend of his and got some -- some letterhead from his friend to --

Q Where did you go?

A I went to Steinway Street. I don't remember the address correctly.

Q What was the name of the store that you went t

A Dinette Furniture.

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(Continued on next page.)

DIRECT EXAMINATION

BY MR. KIMELMAN: (Cont'd.)

Q And when you got to the dinette furinture store, what did you do?

A I just went over there and told the gentleman Willie that Ray sent me over for some paper.

Q Did you pick up a piece of paper from the dinette furniture company?

A Yes, sir.

Q And what did you pick up?

A I picked up one of the letterhead sheets from him and brought it to the office.

Q Did you --

THE COURT: Just a moment. Did you go there alone or did you go with the defendant?

THE WITNESS: No. I went with my two kids.

THE COURT: With your two children?

THE WITNESS: Yes, sir.

THE COURT: The defendant didn't go with you?

THE WITNESS: No, sir, not at all.

THE COURT: All right.

BY MR. KIMELMAN:

Q This was following the conversation that you had with the defendant, is that correct?

THE COURT: That's leading. Strike it out. Disregard it. It's not what was said.

THE WITNESS: Right. Then --

THE COURT: Not right.

THE WITNESS: I'm sorry.

THE COURT: I have sustained the objection. Not right., All right.

BY MR. KIMELMAN:

Q Did you return to the travel agency with this letter?

A Yes, sir.

Q What, if anything happened with regard to this blank piece of stationery?

THE COURT: Just a minute. You went with the letter that -- with that letter?

MR. KIMELMAN: Your Honor, I'm sorry.

Q With the blank piece of stationery, that stationery that you picked up at the dinette furniture company, did anything happen to that?

A Yes, sir. Brought it to the office and they typed something. I don't recall what they typed on it. And after that, I went back to the airport with the same paper that I have the day before.

THE COURT: Can I ask you one question? You

had this paper typed out, was the defendant in the office when you typed out this dinette paper?

THE WITNESS: No.

THE COURT: She wasn't there?

THE WITNESS: No, sir.

THE COURT: All right.

BY MR. KIMELMAN:

Q You don't recall what was typed out on the paper?

THE COURT: Can't tell us?

THE WITNESS: No.

THE COURT: Can't tell us. Draw no inference from that either.

Q Did you go back to the airport a second time?

A Yes,sir.

Q When was that?

A That was Saturday, September 7th.

Q When you went back to the airport on September 7th, what [illegible]

A I had [illegible] other papers, plus the letter of [illegible]

Q With some writing on that you [illegible]

A Right. I didn't open.

[illegible] you got [illegible] your office?

A Yes, I did. Yes.

Q Then you got to the airport, what did you do?

A I went to the same place, airway cargo, France air cargo.

Q When you got there, what happened?

A I gave in the -- all the papers to the gentleman at air cargo.

Q Were you able to get the furinture on this occasion?

A No, sir.

Q Why not?

A They told me that she got to go herself and bring the broker with her.

MR. BEZOZO: Excuse me? I couldn't hear that.

THE COURT: Repeat that, please.

A They told me that she got to go herself and get a broker.

THE COURT: A broker?

THE WITNESS: Yes.

THE COURT: Okay.

Q And after you were unable to get the furniture, where did you go?

A Went back to the office.

Q Did this come at a time on the

when the defendant came to the office again?

A Seventh --

Q This is Saturday. September 7th?

A Yes, sir. Yes, sir.

Q And when she got to the office on the 7th of September, did she have a conversation with you?

A Yes, sir.

Q And could you tell us what that conversation is, what you said if anything, what she said?

A Yes. We tell her that she got to go herself because she got to get a broker. Then she asked me to go back to the airport with her, to get the broker and see if we could get it the same day but I told her we couldn't get it because they told me at the airport that a broker didn't work on Saturday.

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BY MR. KIMELMAN:

Q Now, was there any discussion between you and her about any additional cost?

A No, between her and Mr. Salgado.

Q What did she say?

MR. BEZOZO: Objection.

THE COURT: Were you there?

THE WITNESS: Yes, sir.

THE COURT: Do you understand what we are talking about?

THE WITNESS: Yes, sir.

THE COURT: He may answer.

A I told Mr. Salgado that I had been to the airport a few times already. And I do not want, you know, to keep going back and forth to the airport because I have other things to do. They told me that she has to go herself. Then Mr. Salgado told her that that was going to cost a lot of money, more money, because we had to go back and forth more times. She said don't worry about the money. If I have got to pay more don't worry. I will pay whatever it is.

Q All right, now, when is the next time -- the next time you go back to the airport?

A It was on Wednesday.

did you have the same papers with you?

A Yes, sir.

Q As before?

A Yes, sir.

Q By the way, you attempted to make the first pick up on the 6th and 7th of September. Where were you supposed to deliver the merchandise after you got it?

A When I got it I was supposed to go to Bankqueen or Bankcliff.

THE COURT: And was the address written down anywhere?

THE WITNESS: Bankqueen, not that I recall.

Q How were you supposed to find the correct address?

A I was going to go back to the office with the merchandise and ask Mr. Salgado where I am supposed to bring it.

Q When you went on the 11th of September to the airport, on Wednesday, where were you supposed to deliver the beds on that day?

A On Lamont Street.

Q Do you recall the number there?

A 9201.

Q And did you have anything with you with that

address written on it?

A Yes.

Q Where did you get that from?

A Mr. Salgado.

Q And what were your instructions as to what you were supposed to do when you got to 9201 Lamont Street?

A She was going to be waiting for me downstairs and tell me where to bring it.

Q At the time that you went to make the delivery, did you know what apartment you were going to?

A No, sir.

Q Now, when you got to the airport this time on the 11th, what happened?

A Well, I gave the paper to the gentleman from Air France Cargo. A little while after agents came and identified to me and asked me for my name. Then he pulled me into a room and asked me a few questions.

Q What did you tell the agents?

A He asked me where I was going to bring that to -- the furniture, where I was going to bring it to. And then he asked me if I knew what was in that furniture. I told him I didn't.

Q Now, did you agree to do anything?

A Excuse me?

Q After the conversation with the agents, did you agree to do anything?

A Yes, sir.

Q What was that?

A He told me they was going to bring the furniture over the place, the same place where it was supposed to. So he instructed me how we were going to bring it over there.

Q This conversation you say was with what agent? Do you recall his name?

A It is a tall man called Sharkey.

Q Sharkey?

A Something like that.

Q And did you in fact go to 9201 Lamont Street?

A Yes, we did.

Q Was anybody with you?

A Yes, sir.

Q Who was with you?

A Another agent, a short guy, I think Jerry.

Q Was Jerry in the car with you?

A Yes.

Q Did you take the merchandise with you?

A Yes, sir.

Q And where was that? In the station wagon?

A It was part in the station wagon. Some on top.

Q When you got to 9201 Fremont Street, what happened? What's the first thing you observed when you approached that place?

A The lady was outside.

Q You say the lady. Whom do you mean?

A Excuse me. I saw Mrs. deGarces outside. And I pointed out to the agents that that was the lady, and that she -- I asked where we are going to park. So she said bring the station wagon behind the building in the back. So we did. We made a U-turn and went inside and parked the car in the building. And she said just put it over there on the floor.

Q Was there any conversation as to where else the furniture should be brought to?

A Yes. After we put it down I was asked by the agents to ask her which apartment we was going to bring it. I asked her. And she said leave it over there because she didn't have the keys to the apartment. The cousin has the keys and she was working.

Q She said my cousin has the keys?

A Has the keys.

Q Did there come a time when you observed the front of this [illegible]

A Yes.

Q Did there come a time when certain questions were asked to the defendant, following her arrest?

A Yes. I was actually translating for Mr. Sharkey some questions that he was asking her, and I helped him out too.

Q Was Mr. Castillo there also?

A Castillo?

Q Was Jerry there?

A Oh, yes, Jerry, yes, sir.

Q Did there come a time when Jerry left?

A Yes, sir, he did.

Q Is that when you started to translate the questions?

A Yes, sir.

Q Now, can you tell us now what are the questions that you asked?

THE COURT: No, before that ask your preliminary questions first. He can't answer that yet.

BY MR. KIMELMAN:

Q Did you hear --

THE COURT: No. Were you present at any time when certain warnings were given to this defendant? Did you hear that? Was anything read to her or told

to her?

THE WITNESS: Well, yes, they said something but I went to pick up the other agents.

THE COURT: That shouldn't be repeated.

MR. KIMELMAN: There has been no objection by counsel at all.

THE COURT: I can't help what he does. But I conduct the trial. It doesn't make any difference--

MR. KIMELMAN: If that is the case, your Honor--

THE COURT: -- You must give a preliminary warning. That's the law --

MR. KIMELMAN: Your Honor, in that case --

THE COURT: -- I must keep my record straight. And it will be straight as I sit here. It never changes.

MR. KIMELMAN: Yes, but, your Honor, if that is the case I would ask that this witness be excused and the proper foundation be laid through another witness that we can establish it through.

THE COURT: Not as far as he has gone. You knew that when I asked the question of the agent. You said he was there.

MR. KIMELMAN: If I may, your Honor, there is another witness who will testify regarding the rights

that were given which I believe will lay the proper foundation.

THE COURT: We don't know what transpired from the time he left until the time he came back. I have no idea. He has no idea.

MR. KIMELMAN: Yes, sir.

THE COURT: Do you know what happened from the time you left till you came back? Where did you go?

THE WITNESS: I went outside to call the other agents that were around.

THE COURT: How long were you gone?

THE WITNESS: A minute.

THE COURT: When the other agent came back, were you there?

THE WITNESS: Yes.

THE COURT: Did he come back with you?

THE WITNESS: Yes.

THE COURT: Did he speak spanish?

THE WITNESS: The other agent? The only agent that was there was Jerry and he spoke spanish too.

THE COURT: He spoke spanish. Did you hear him say anything to her in spanish?

THE WITNESS: Well, a few questions, getting identified, getting some papers, I don't know, to sign

something.

THE COURT: I will not allow it.

MR. KIMELMAN: All right. Your Honor, again, if I may --

THE COURT: I am the trial judge. I am conducting the case the way it is supposed to be conducted by a trial judge.

MR. KIMELMAN: I understand, your Honor.

THE COURT: I will not permit a record to be improper at any time.

MR. KIMELMAN: Your Honor, I fully agree with the Court.

THE COURT: You can reverse me on other things, but never on my rulings -- never on my rulings.

MR. KIMELMAN: I fully agree with the Court. The Government would have no intention of putting forth --

THE COURT: We will take a five-minute recess. The jury is excused.

(Witness temporarily excused.)

(The jury thereupon retired from the courtroom.

(The following occurred in the absence of the jury.)

THE COURT: Don't talk to anyone.

THE WITNESS: No.

THE COURT: No one. Do you understand that means don't talk to anybody. Nobody. Not even Mr. Kimelman. Nobody.

THE WITNESS: All right.

THE COURT: OK.

MR. KIMELMAN: Your Honor, if I may, my only intention was to call Agent Castillo who would testify that he gave the rights in spanish. And after he gave the rights in spanish, he asked certain questions --

THE COURT: That's right. I have no objection to that.

MR. KIMELMAN: If I may, your Honor, he then left. After he left the questions continued with Mr. Brea asking -- Mr. Brea translating.

THE COURT: No good. It's no good. That's the bad part of it. That's the interruption part of it. No good. How many times has it been reversed on that very thing. Once it stops with someone else and starts with another person, so you have the problem with the Miranda warnings. Each time you suspend and someone starts questioning you are supposed to give the warning over again.

MR. KIMELMAN: Your Honor, if I may, --

THE COURT: How many times must I go through that on a trial?

MR. KIMELMAN: Your Honor, if I may, I understand the Court's objection --

THE COURT: I am not objecting. I have no objection. I am merely giving the reason for the ruling.

MR. KIMELMAN: I understand that.

THE COURT: And I won't permit the case to go beyond the rule. You are not going to reverse on Miranda. Many other things, but not involving Miranda. This has been around too long now.

MR. KIMELMAN: But if I may, your Honor, there was no suspension as the Court believes. The fact is that this didn't stop for half an hour.

THE COURT: He has never heard the warnings given. This man who was interrogating has not heard the warnings given. I will give you a chance. Take your time with it and do what I ask you to do. If you come down with something to show me I am wrong, I am the first one to accede to it.

MR. KIMELMAN: Very good. May I have a short recess?

THE COURT: My impression at this point though is that it is very dangerous ground. We will take

five minutes -- we will take a ten-minute recess.

(Short recess taken from 12:40 o'clock p.m. to 12:55 o'clock p.m.)

(Thereupon, at 12:55 o'clock p.m., a recess was taken to 2:15 o'clock p.m.)

(continued on next page)

(She followed in Chambers, in the presence of the jury.)

THE COURT: All right, bring in Juror Number 2.

(Juror Number 2 present.)

THE COURT: Step in, ma'am.

JUROR NO. 2: Yes, your Honor.

THE COURT: Have a seat, please.

Some information has come down to us and I am going to ask you some questions.

JUROR NO. 2: Sure.

THE COURT: Someone has brought information to us that you were on another jury in this building and when you were asked the question whether or not you had any precondeived notions or any reservations or whatever the question may have been about narcotics cases, the statement has been made by you, presumably, you said that you might have or you did have some notions about them.

JUROR NO. 2: On that particular --

THE COURT: On that particular case?

JUROR NO. 2: Yes.

THE COURT: Will you tell me what the circumstances were?

JUROR NO. 2: Sure, your Honor.

About 20 years ago, in the house that I lived in, there were just two sisters that lived in the house that were caught selling dope and they caught selling dope, $90,000.

THE COURT: On that case, a sale?

JUROR NO. 2: Yes.

THE COURT: Do you have any preconceived notions whatsoever about this case?

JUROR NO. 2: No, this is over 20 years ago.

THE COURT: You told that judge, though, that -- do you remember who the judge was you said that to? What court? Was that Judge Weinstein, by any chance?

JUROR NO. 2: I don't know. A white haired man.

THE COURT: We do not see each other that much. We are so darned busy around here.

JUROR No. 2: Court room 2 on the second floor.

THE COURT: That must be Judge Neaher.

MR. KIMELMAN: Judge Neaher.

THE COURT: White hair with glasses?

JUROR NO. 2: Yes.

THE COURT: My next door neighbor. Now, I tried to stress upon you yesterday when we selected you that it is so very important that the jurors be

absolutely impartial, and even I, when I get involved very briefly in the case, you know, I try to be extremely impartial. I am on no one's side.

The jurors are supposed to be the same way, on no one's side.

If you feel that this case will have some type of an effect upon you, where you would have -- not be fair in the determination to both sides -- I am talking about the Government and the defendant. I do not talk about one side. Then, of course, I would ask you to remove yourself.

JUROR NO. 2: No, I don't, your Honor. Really.

THE COURT: You do not. If the lawyers are satisfied with that, I am satisfied.

JUROR NO. 2: This was, as I say, over 20 years ago. I never seen them since.

THE COURT: The only reason why you told them that in the other case was because it happened to be a sale case?

JUROR NO. 2: Right.

THE COURT: I had told you already, this was not a sale case?

JUROR NO. 2: Yes.

MR. KIMELMAN: I have no objections.

MR. BEZOZO: Okay, I'll go along.

THE COURT: You have no objection.

JUROR NO. 2: I'm very impartial.

THE COURT: You may continue to sit.

JUROR NO. 2: Thank you.

THE COURT: I will ask you not to discuss what we have discussed with your fellow jurors, no reason why you have been asked to come in to see the judge, nothing. If they ask you, say a personal matter.

Thank you.

JUROR NO. 2: Thank you.

(Juror No. 2 leaves chambers.)

MR. KIMELMAN: Your Honor, this gentleman apparently has been talking to other jurors.

THE COURT: We are going to kick him in the head.

MR. KIMELMAN: Can you have him in and tell him to leave this jury alone?

THE COURT: As long as you will be my witness when the time comes.

MR. BEZOZO: I mentioned to him the same thing.

MR. KIMELMAN: He told me this morning that he talked to the foreman of the jury.

THE COURT: He is a crybaby.

Bring him in, please.

MR. BEZOZO: He is peeved about not sitting.

THE COURT: That's right.

(Mr. Terry Zagon is now present in chambers.)

THE COURT: Sir, just have a seat right here. Will you give your name for the record, sir?

MR. ZAGON: Terry Zagon.

THE COURT: All right, as you noticed, we did call Juror No. 2 in and I have asked her some questions. I have been informed that you have made a statement that she had told another judge that she might be prejudiced in reference to a sale of narcotics in a narcotics case. Right?

I asked her that specific question. We are satisfied with her answer. The lawyers are satisfied and the Court is satisfied. She will continue to sit. We are satisfied.

As to the gentleman number 3, I was satisfied that he was able to understand me. The lawyers were satisfied. I am not going to call him.

We appreciate your concern but I suggest that you do not talk to any of these jurors on the stand.

MR. ZAGON: I didn't speak to any of them, your Honor.

THE COURT: Okay. Or anyone else because we can have -- we have enough problems with the case itself without trying to gain ramifications and problems

with what we call side issues.

If I thought for a moment that there was something improper, illegal or illicit, I would be the first man to make sure that that would be taken care of. I do not permit it. Mr. Kimelman doesn't permit it, nor does Mr. Bezozo.

Everyone here wants to make sure everything runs the way it is supposed to run.

The most I can say to you is that we have done what we are supposed to do. They are satisfied, I am satisfied.

MR. ZAGON: I'm satisfied.

THE COURT: We will continue. Okay.

MR. ZAGON: Thank you.

THE COURT: Thank you very much for your concern.

(Mr. Zagon leaves the chambers.)

MR. COURT: All right.

MR. KIMELMAN: Your Honor, in light of what happened before lunch, there are some things that I'd like to put on the record also.

Mr. Bezozo never made any formal request for discovery to the United States Attorney's Office.

On Monday of this week, when I thought we were going to commence the trial, I went to Mr. Bezozo and

said to the effect that this defendant made certain statements after she was arrested to an agent, and I informed Mr. Bezozo of these statements and I said the reason I am bringing up -- although you didn't make any discovery request to me, the reason I'm bringing this to your attention is because the Government would want a suppression hearing before the jury was empanelled to fully decide whether this isssue was suppressed, as provided by the discovery rules and the rules of criminal procedure of this court.

Mr. Bezozo informed me to the effect that, no, he had talked to his client and she had admitted making these statements and, therefore, he was not going to make any motion to suppress.

Therefore, there was no motion made to the Court --

THE COURT: To suppress what?

MR. KIMELMAN: To suppress any post arrest statements by this defendant on any grouns, constitutional grounds or otherwise. Therefore, the Governmen --

THE COURT: Constitutional ground is never waived.

MR. KIMELMAN: I understand.

THE COURT: The client --

MR. BEZOZO: May I just say one thing? A couple of things.

Maybe you mistook some of my reactions in the court this morning.

THE COURT: Who? Me?

MR. BEZOZO: No. Mr. Kimelman.

THE COURT: I do not mistake anybody's reactions.

(Cont'd on next page.)

MR. BENOZO: The only thing that I was stating at the latter part, I was trying to elicit -- listen to the examination of the witness and at the same time I had asked the interpreter to ask my client a couple of questions.
And she was only informing of the fact that she was never given her Miranda rights at the time -- at the scene of the arrest.

She stated to me that at the time -- now I'm presuming this must have been at the Drug Enforcement headquarters on West 57th Street. She was given some rights and asked further questions. But even prior -- after the luncheon recess, she made a statement that she could not recall signing any actual statement.

MR. KIMELMAN: No. There is --

THE COURT: Miranda rights are never waived. I am not going to have this thing go on appeal or this case go on appear on a Miranda rights situation. He could sit there and not do a thing about it and then she could get herself a whole new lawyer and say, "My lawyer did not protect me. Go up to the Circuit Court of Appeals and right back down again, what's wrong with Costantino? He doesn't understand

the Miranda law?"

I understand it and I'm going to make sure that if he doesn't say something, I want to know.

MR. KIMELMAN: Your Honor, the Government fully agrees with the Court that --

THE COURT: That's the only reason for that.

MR. KIMELMAN: -- that the record should be protected and that perhaps counsel can't waive his client's constitutional rights.

THE COURT: Absolutely not.

MR. KIMELMAN: I only put on the record what transpired between Mr. Bezozo and I prior to trial to make it clear what happened.

THE COURT: I understand that fully. You don't have to explain that to me.

MR. KIMELMAN: At this point, your Honor, the Government would request, although it is admittedly quite unusual, that a full suppression hearing be held at this time as to any and all statements made by this defendant after her arrest.

THE COURT: It is unfortunate because there is already testimony by an agent who said he did give Miranda rights and when I asked him was it read from a card, the reverse side was in Spanish, and was it read in Spanish, and he said, yes. He

3 didn't have to say yes. He did.

MR. KIMELMAN: I believe, your Honor, he said that he was there while the other agent read it.

THE COURT: But I asked him that. Now it turns out that -- at least this fellow never heard it.

MR. BEZOZO: I don't think he said yes. I think he said he thought so.

THE COURT: Which is even worse.

MR. KIMELMAN: In any event, your Honor, the Government feels the only way that it could properly present to this Court the statements made by this defendant and to assure the Court that the defendant's rights were adequately protected is a full hearing with everybody who was there present.

THE COURT: I think we should. If that's what you want, we will suspend with the Jury for the time being.

MR. KIMELMAN: It's not what I want.

THE COURT: It is necessary.

MR. KIMELMAN: It is unusual for the Government to request a suppression hearing.

THE COURT: I think it is necessary.

MR. KIMELMAN: We can put it in terms of a voir dire of the witnesses.

THE COURT: I know the theory he's trying his

case and you know the theory he's trying his case. I understand. I wouldn't think -- I might be very dumb -- I might do it the same way he's doing it. I don't knowwhether I would handle it the same way. I might or might not.

Still, where there are strict matters of law which the Court is cognizant of, if the lawyer does not object, it becomes incumbent upon the Court, especially with a non-speaking, non-American speaking client, to do what it is doing, and you notice, I have not -- where it was your prerogative to do the questioning, whatever you wanted to ask, I didn't inject myself at all. Only when I thought there had to be some protecting -- not protecting her, but protecting for the record. That's the only time I injected myself.

I really don't want to get involved in the trial. I've had it over the years. I don't need it. I don't want to be the trial lawyer. I gave that up.

MR. BEZOZO: I am not going to start throwing out objections just for the sake that I said I made a hundred objections.

I don't see the purpose to that.

THE COURT: I understand. This was strictly on a technical basis. There were some things that

came in I just let them go in because it wasn't my place to make a statement.

MR. BEZOZO: I realize that.

THE COURT: I know you realize it. I didn't say a word. I just sat there and saud: Well, if he wants to let it in, it's all right with me.

I think, personally, the case is going along very nicely and I think that the two of you are conducting yourselves very well. That has nothing to do with it. It's a pleasure to sit down and have two lawyers try a case, at least you're not fighting with them all the time. There is an objection we should listen.

There is nothing better than to have lawyers with their ears open as I call it. That's what is happening here. I think if you want, we'll give --

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MR. KIMELMAN: Your Honor, I brought witnesses down. I have five, six or so witnesses present. The people who were present at 57th Street and I have the people who were present at the scene.

I suggest that we just --

THE COURT: Each time that she's given the Miranda rights you have no problem. It's, for instance, like in the case where they make the arrest and they give Miranda and then they take her and -- take him, the person, they put him in a car and start asking questions all over again. This, the first interrogation has ended.

Once they move from that area or once the people have moved from the area and they come back into it, it's ended.

Now, you have to start all over again.

MR. KIMELMAN: I understand your Honor's questioning this morning. I think that when all the testimony comes out, the suppression hearing, the Court will see that there was no suspension.

THE COURT: All right.

MR. KIMELMAN: This can only be done through the people who were there.

THE COURT: Okay.

MR. KIMELMAN: So if we can proceed to the court

I would suggest that the jury be excused for the day.

THE COURT: Maybe we'd better do that.

What do we have tomorrow?

THE CLERK: Three sentences.

THE COURT: Let's find out how long this will take. Maybe we can go on.

MR. KIMELMAN: It may not take long, your Honor. I would anticipate -- I've got approximately six or seven witnesses who I brought in. In anticipation of this. I would anticipate it has to take an hour, until 5:00 o'clock. I would say the Government would certainly request that if at all possible the jury be brought back tomorrow to complete the case.

THE COURT: Will you be able to complete it tomorrow?

MR. KIMELMAN: Your Honor --

THE COURT: Otherwise we will go over -- on Fridays, I like to take Fridays and do my other work and get my decisions out.

MR. KIMELMAN: The difficulty we have, your Honor, is the Government would only -- assuming that the statements become admissible, the Government would only have two short witnesses after the witness who is on the stand.

The Government would then renew its motion as to the letter that the Court withheld its decision on.

There may be some argument there. If the Court should decide to let the letter in at that time then that would require at least one more witness on the Government's part.

Then I anticipate from Mr. Bezozo's statement that the defendant and one other witness will take the stand. I don't know if it will be possible to finish tomorrow.

THE COURT: Your client will take the stand?

MR. BEZOZO: Yes.

THE COURT: All right. I would say, under the circumstances, maybe she has to take the stand here.

MR. BEZOZO: She definitely does, your Honor.

THE COURT: Yes.

MR. BEZOZO: The only way she is not going to take the stand is if you dismiss at the end of the People's case.

THE COURT: I couldn't tell you what I'm going to do.

MR. BEZOZO: I'm not asking you to.

THE COURT: I don't make my mind up -- I make my mind up as I hear each piece of evidence.

MR. KEMPO: My application is that defendant and that tall girl.

THE COURT: Well, if tomorrow, if we finish, we still won't be able to charge the jury tomorrow because on Fridays we don't charge them.

What do you have for Monday? Monday I could stay. It won't make any difference to me. Friday you hold them over, they'll shoot you.

I don't send juries home. I don't believe in sending the jury home.

MR. KIMELMAN: I think, your Honor, if we excuse this jury from now until Monday --

THE COURT: What difference does it make?

MR. KIMELMAN: Then the case will probably finish up on Tuesday.

THE COURT: Still in the week, though. We are not on a week end.

MR. KIMELMAN: I would prefer.

THE COURT: I would rather because we can finish with the testimony on Monday and then Tuesday morning come in 9:30, charge and sum up. You will not finish tomorrow anyhow.

MR. KIMELMAN: No. I think we will be done tomorrow. The Government's case.

THE COURT: Let's finish with the suppression hearing. I'll bring them back Monday morning. We'll start 10:30 sharp Monday. The lawyer on the other case will be sick. Anyway, they are enjoying you trying the case out there.

MR. KIMELMAN: I saw the IRS Intelligence Agents out there. They are enjoying it.

THE COURT: Okay. Let's do it that way.

MR. KIMELMAN: May we proceed with the suppression hearing now?

THE COURT: Sure.

MR. KIMELMAN: I do have some cases, in case we run into a problem.

THE COURT: All right.

(Chambers session ends.)

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(After Recess.)

(The following occurred at 4:20 o'clock p.m.)

THE COURT: All right, bring the jury in.

(The jury thereupon returned to the courtroom.)

THE COURT: Just stand there for a moment. I will release you until Monday morning. We always have some problems. I am going to have a hearing that we will be involved in. And we have some other problems. So we will go over until Monday at 10:30 and you will have the case. Have a good weekend. Do not talk to anyone. You need not report tomorrow. There will be motions all day tomorrow. So there is no sens in your being here. Monday morning at 10:30.

(The jury thereupon retired from the courtroom.)

MR. KIMELMAN: Your Honor, are we ready to proceed?

THE COURT: Well, we are supposed to get a Grand Jury hand up. I don't know whether to wait for them or not. Let's take that up first. Here they are now.

(Short recess.)

THE COURT: All right.

(The following took place in the absence of the jury.)

MR. KIMELMAN: Are we ready to proceed?

THE COURT: Yes.

MR. KINELMAN: Your Honor, the Government calls Jerry Castillo.

THE COURT: All right, the purpose of this hearing outside the presence of the jury is to determine whether or not the defendant in the matter received his proper warnings at the time of arrest or at any other time at which she was interrogated either prior to arrest or after arrest. It is known as the Miranda Hearing, and also whether or not statements made by the defendant should be suppressed.

J E R R Y C A S T I L L O, called as a witness having been first duly sworn by the Clerk of the Court testified as follows:

THE CLERK: State your name.

THE WITNESS: Jerry Castillo, C-a-s-t-i-l-l-o.

DIRECT EXAMINATION

BY MR. KINELMAN:

Q Sir, by whom are you employed?

A I am employed by the Drug Enforcement Administration Bureau of Justice.

Q In what capacity?

A I am a special agent.

Q Were you so employed on the 11th of September, 1974?

A Yes sir.

Q And as part of your duties on that date did you effectuate the arrest of a woman known as Amparo Pelaez De Garces?

A Yes sir, I did, sir.

Q Do you recognize that individual as being present in the courtroom today?

A Yes, she is sitting at that table next to her attorney dressed in white.

MR. KIMELMAN: Your Honor, could the record indicate that the witness has identified the defendant.

Q Now approximately at what time and under what general circumstances did you place this defendant under arrest?

A At 3:15 p.m. September 11th at 9201 Lamont Avenue in Queens.

Q And what were you doing immediately prior to placing the defendant under arrest?

A We were delivering some furniture which she signed.

Q And was there anyone else present with you on the scene?

A Yes sir. There was Frank Brea, Agent Charles, Agent Powers, Agent O'Connor, and several other surveillance

agents.

Q Now, going from the point of arrest will you tell us exactly what you said, if anything, to this defendant?

A Okay. At the point of arrest, I showed her my badge.

I told her I am the police. This is in Spanish. And I told her that she doesn't have to say anything until a lawyer comes. And she doesn't have to talk. And everytime I told her if she understands what I am telling her at that point.

Q Did she respond?

A She said yes. And I told her she doesn't have to talk. And she affirmed it. She said yes. And I told her why she was being arrested. That she was transporting cocaine.

Q Did you say anything to her besides you don't have to say anything?

A I said you have to --

Q I want you to use to the best of your recollection your exact words, everything you said to her after you placed her under arrest?

A In English?

Q Yes, in English.

THE COURT: He couldn't take it down.

THE WITNESS: In Spanish, yes.

I told her I am the police and that she's under arrest. And she has a right not to talk.

I said you understand that?

She said yes.

I said, you could wait for a lawyer. You don't have to say one thing right now to us, anything. You don't have to say nothing.

She affirmed. She said, "Yes. Okay." But she didn't understand, you know, why was the reason she was being arrested for at that time.

And I said, "Well, you were being arrested for transporting cocaine."

Q Did you say anything else to her?

A Just about the lawyer.

Then I asked her -- then I started asking her questions if she had any knowledge about this. And where she was taking it, who was going to be delivered to. If she lived in this building.

Q Did you ask her at anytime -- did you advise her at anytime that anything she said might be used against her?

A Yes sir.

Q Did you get a response to that?

A Yes sir.

Q Did you advise her that if she couldn't afford a lawyer, one would be appointed for her?

A No, that part I didn't ask her, that part, sir.

Q In other words --

THE COURT: Did you tell her that she didn't have to talk until she had a lawyer or one was appointed for her? And that she had a right to be taken before a Magistrate who would appoint a lawyer for her? Did you tell her that?

THE WITNESS: No, I didn't go through that, no sir.

THE COURT: Did you tell her even though she may have answered some questions that she had a right not to say anything at anytime, that she desired to stop talking.

THE WITNESS: No, just like I said before, sir, I told her that she doesn't have the right to talk unless a lawyer is present and that --

THE COURT: That is a lack of compliance with Miranda completely.

MR. KIMELMAN: Your Honor --

THE COURT: Didn't you have a little Spanish card that is in Spanish so when you arrest a Spanish person you read it in Spanish to have what their rights

are under Miranda.

THE WITNESS: No sir, not at that point.

THE COURT: Did you have it in English?

THE WITNESS: Yes. What we had --

THE COURT: Did you have it in English?

THE WITNESS: But I didn't have it on my presence at that time.

THE COURT: Did anybody else have it in their presence at that time, if you know?

THE WITNESS: I don't recollect if anybody did.

THE COURT: Did anybody else give her her rights as far as you know?

THE WITNESS: At that point, no sir. I was the only one because I was the only Spanish speaking person.

MR. KIMELMAN: Your Honor, the Government will concede that the full Miranda rights were not given by this witness. However, the Government would contend that the test under the law as set forth by the Supreme Court in this Circuit is the voluntariness of the statement under the totality of all the circumstances.

THE COURT: Yes, that is right. But even that I didn't hear anything from him about anything voluntary on her part.

MR. KIMELMAN: Well, I will proceed --

THE COURT: Voluntary would be that she answered or she wants to answer or give any answers and she has a right not to give any answers. That would be voluntary. If you don't give her that admonition it is just not voluntary any longer.

MR. KIMELMAN: Your Honor, the admonition was given and that she says --

THE COURT: I'm not going to argue with you because I have to make the determination. And I will make the determination whether or not Miranda was complied with.

MR. KIMELMAN: Yes sir.

BY MR. KIMELMAN:

Q Will you tell me --

THE COURT: Especially these gentlemen knew at the time that they went to the premises they had already set up their surveillances. They already knew what the delivery was going to be or all about it. They already knew where they were going. And they knew they were going to apprehend the person. All of these things they knew. And at that time they had it withing their knowledge. The defendant didn't have it within her knowledge. They had it within their knowledge. This is when they should have been prepared fully to

give the full extent of her Constitutional Rights under Miranda at that time. You can't impose the burden upon the defendant. They are the law enforcement officers. She is at most a violator under the circumstances.Therefore she has certain rights.

I just want to place on the record why am I saying the things I am.

MR. KIMELMAN: Yes sir.

THE COURT: You do not think it is unreasonable for the Court to think this way. All right.

BY MR. KIMELMAN:

Q You advised her that she didn't have to say anything until she had a lawyer present?

A Yes, I told her she didn't have to say anything to us.

Q And you advised her that --

THE COURT: Did you say do you have a lawyer present or you have the right to get a lawyer? Which one of the two did you say?

THE WITNESS: I said you could get a lawyer. You don't have to talk until you get a lawyer. That's what I said.

Q And you also told her that anything that she said would be used against her?

A Yes.

Q Did you say in some form that a lawyer could be present while she was being questioned?

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Castillo-direct

THE COURT: What was her response when you said to her that you are being arrested for cocaine after you gave this short admonition of yours?

THE WITNESS: Yes, it was short, and I said --

THE COURT: What was her response after you said you are being arrested for cocaine?

THE WITNESS: She said, "I have no knowledge that there was cocaine in the box."

She denied that she knew anything about it.

THE COURT: All right.

Q Now, did she indicate to you in any way that she wished to talk to you after you gave her the warnings that you did give her?

A Well, she answered some of our questions that we were asking. We asked her where she lived and first she said Long Island.

Then I asked her, does she know anybody in the building.

First she didn't know and then later she said yes. And she didn't give us any apartment number. We had to look for it. She did answer some of our questions, yes.

Q Did you ask her any specific questions about the merchandise that had just been delivered to her?

A About the cocaine in the box? All she said -- we did ask her about the cocaine. We says, "Do you know that there was cocaine in there?"

She said, "No."

Q Did you ask her what she was doing with the 5 beds?

A Yes, she told us that she was waiting --

THE COURT: What do you mean beds? Bedboards. You might get the impression that they were full beds.

MR. KIMELMAN: If I may, your Honor, there were 5 bed frames.

THE COURT: Yes.

A (continuing) She told us that someone would be coming over to pick it up, a man by the name of Jorge, and that he would be coming over and picking it up.

Q Now, did there come a time when you ceased questioning and left?

A Yes, sir, I did.

Q When was that?

A We went inside 9201 Lamont Street because we had information that another defendant might be inside the building.

MR. KIMELMAN: I have no further questions.

THE COURT: Any questions?

MR. BEZOZO: No questions.

THE COURT : You may step down.

Before you leave, by the way, were you instructed what questions to ask on Miranda?

THE WITNESS: No, not on Miranda, sir, but what questions I was asking her.

THE COURT: What was that?

THE WITNESS: Not on Miranda, but what questions I was asking her.

THE COURT: But on Miranda, you just gave yours?

THE WITNESS: That was my own thing.

THE COURT: No one told you what to do? That was your own thing? No agent said now ask these questions whether she understands these things?

THE WITNESS: No, Miranda was my own.

THE COURT: Well, okay.

Wait until he gets out.

(Witness excused.)

(Witness leaves the courtroom.)

THE COURT: I try to avoid compounding problems for you. You fellows don't appreciate it sometimes. I really do. There is nothing worse than having 94 different whatever you call them.

(At this point Thomas Sharkey entered the courtroom.)

THE COURT: He has already testified. I know what he has said. You can take his testimony and adopt it for this hearing if you want to do that.

MR. KIMELMAN: If I may, your Honor, it was not just complete.

THE CLERK: Shall I swear him?

THE COURT: You don't have to swear him. We will accept his previous testimony on the hearing at this time.

He was previously sworn and the Court accepts that he will tell the truth in any event.

T H O M A S S H A R K E Y , called as a witness, having been previously sworn, resumed the stand and testified further as follows:

DIRECT EXAMINATION

BY MR. KIMELMAN:

Q Now, Agent Sharkey, after your observing the defendant being arrested, you went over to scene, is that correct?

A Yes, that is correct.

Q Who else was present?

A Agent Castillo.

Q Was anyone else present?

A Not to my knowledge. There might have been another agent a few feet away.

Q Mr. Brea?

A Frank Brea.

THE COURT: Well, that's the fellow that we just had on.

Q You testified before that you heard Agent Castillo give the defendant the rights in Spanish?

A That is correct.

THE COURT: Well, do you understand Spanish?

THE WITNESS: I understand a little bit of Spanish, yes, your Honor.

THE COURT: There is nothing more dangerous than to understand a little of anything. But did you understand what he was saying in Spanish? Never mind understanding a little bit of Spanish. Did you understand completely the admonitions that he was giving her and the rights under Miranda in Spanish? That's important.

THE WITNESS: Well, your Honor, Agent Castillo --

THE COURT: Or did you guess at what he said?

THE WITNESS: No, I didn't guess.

Agent Castillo initiated the Miranda warnings

pursuant to a form we have, 13A, in Spanish.

As he initiated them, I assumed--

THE COURT: Did he read from this form?

THE WITNESS: I don't think he read from that.

THE COURT: Did he have the form? Do you recall?

THE WITNESS: That I don't know.

THE COURT: Well, how do you know he initiated it from the Spanish form? You assume having been a Spanish person --

THE WITNESS: No, I didn't.

THE COURT: -- he might have read the back of the form and then told her?

THE WITNESS: No, sir.

THE COURT: What are you telling me?

THE WITNESS: What I am telling you is in every arrest case, the agents --

THE COURT: I have enough problems with one case without trying to find out what the normal procedure is in all cases.

In this case only, what did Agent Castillo do when he gave her her Miranda warnings, if you know?

THE WITNESS: What did he do?

(continued on next page.)

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THE COURT: Yes. How did he do it?

THEWITNESS: He recited the Miranda warnings in Spanish.

THE COURT: Do you remember how many of the essentials in the Miranda warning he recited to her that you say you understood a little bit about?

THE WITNESS: Do I recall exactly every one? He initiated the warnings in Spanish, which I understood. I therefore --

THE COURT: Which ones did you understand? Let's hear that.

THE WITNESS: He initiated the warning that she was under arrest, that she had the right to remain silent. With that I assume he was following through, which is normal procedure in every arrest case. So I did not --

THE COURT: You would not be shocked if I told you that many agents come in here that do not follow normal procedure? You would not be shocked at that, would you, Agent?

THE WITNESS: Your Honor, I would be shocked.

THE COURT: I am not trying to be facetious either, believe me, because they know me. I am never facetious.

I am only telling you there are many agents that come in here who do not follow normal procedure. I do not know if Castillo did. According to him, he did not.

THE WITNESS: Your Honor, I was there when --

THE COURT: Agent, he just testified that he did not. Okay?

Now you may say anything you wish.

Go ahead.

BY MR. KIMELMAN:

Q Agent Sharkey, you heard Mr. -- Agent Castillo initiate the warnings?

A I did.

Q Do you recall exactly what warnings he gave?

A I recall he placed her under arrest. He advised her that she had the right to remain silent. She had the right not to say anything, not to answer any questions.

Q Do you recall anything else? Specifically recall?

A I recall one other thing:

Following -- she had the right to remain silent, anything she said could be used against her.

Now, at that point it was -- he continued to

her in Spanish. I assumed he was finishing the warnings in Spanish and I walked a few feet away.

THE COURT: Are the first ones in English the first part in English?

THE WITNESS: No, your Honor. He started the warnings in Spanish, which is what I understood, so I naturally assumed he was going to continue on with the rest of the Miranda warnings.

KIMELMAN:

Q And after you walked away a few feet, did you return back to Agent Castillo?

A Yes.

Q Was any questioning done of the defendant at that time? Any questions asked of the defendant?

A Yes.

THE COURT: What were the questions? What were the responses given from Spanish to Spanish to English?

THE WITNESS: The question -- we questioned her as to where she lived, how she got to where she was, was it her merchandise and a few other questions. The answers were very evasive. They were in Spanish but they were very evasive.

THE COURT: Were they evasive because of the

response she received or evasive because she knew that by reason that you understood a little bit of Spanish?

THE WITNESS: No. The evasive answers I termed the answers evasive because this is what was translated to me when she was asked the questions.

Then the agent told me she was answering evasively.

THE COURT: Anything else?

BY MR. KIMELMAN:

Q Did there come a time when Agent Castillo left?

A Yes.

Q The questioning?

A Yes.

Q Did the questioning continue after he left?

A A few questions were asked, yes.

Q Who translated the questions after Agent Castillo left?

A Mr. Frank Brea.

THE COURT: Was she advised at this time that she didn't have to say anything to Frank Brea about anything under the Miranda warnings?

THE WITNESS: No, not to my knowledge, your Honor. After the initial warnings were said, they

weren't re-advised two minutes later, because it was fairly spontaneous, the questioning. There was no great time lapse.

Q Was there any time lapse at all between when the -- in the questioning, between when Agent Castillo left and the questioning continued to Frank Brea?

A 30 seconds, a minute at most, maybe.

Q So the questioning didn't stop for any period of time and then resume again?

A No, it did not.

Q What was the total amount of time from when the defendant was first arrested until Agent Castillo left?

A At best, 2 or 3 minutes, I would say.

Q In other words, from the time that she was arrested and given the rights that you recall, to the time that Agent Castillo left and Mr. Brea continued the translating, only 2 or 3 minutes had elapsed?

A If that.

As I said before, it was fairly spontaneous.

MR. KIMELMAN: I have no further questions.

THE COURT: Any questions?

MR. BEZOZO: No.

THE COURT: You may step down. Thank you.

(Witness excused.)

F R A N K B R E A , having been previously duly sworn, resumed the witness stand and testified further as follows:

DIRECT EXAMINATION

BY MR. KIMELMAN:

Q Mr. Brea, you were sworn before. You are still under oath.

A Yes.

Q When the defendant was arrested, you were present; is that correct?

A Right.

Q Did you hear -- and you testified before that you are fluent in Spanish?

A Right.

Q Did you hear Agent Castillo start to give the defendant any rights?

A He started. That's when I went to get the other agents. He showed the shield and said, start talking to her, and then I left to get the other agents that waited outside.

Q You went to get -- tell the other agents that the arrest had been made, for them to come?

A Right.

Q Did you hear anything that he said to her at

that time?

A He only start talking like you don't have to talk. Something like that.

When I came back, they keep asking questions.

Q Did there come a time when Agent Castillo left?

A Castillo? Who is Castillo?

Q Gerry.

A Gerry? Right.

Q And did you remain?

A Right.

Q Did you continue to ask the witness questions that were given to you by the agents?

A By agents.

Q Was there any lapse in time between when Agent Castillo left and you began your questioning?

A Yes.

Q How much time elapsed?

A 10 minutes. Something like that.

Q From that time that he left to go into the apartment building and when you started to translate?

A About -- the time he went and came back, about 10 minutes.

Q How long a period of time had elapsed from when the defendant was first arrested and when you first

started asking the questions yourself?

A I didn't get it.

Q The defendant was arrested?

A Right.

(continued on next page.)

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DIRECT EXAMINATION

BY MR. KIMELMAN: (Cont'd.)

Q How long after she was arrested, did you start to do the translating? How much time had passed? In other words, from the time you heard him start to give her her rights until the time that he left and you started to talk to her?

A They were over there for a while. I would say, another ten minutes and then another agents came in and they went outside looking for the apartment. It was the apartment supposed to go. Then Jerry have to go with them and then I was asking what the agents asking me to ask.

Q Okay. But you are not answering my question. How much time had elapsed from the time she was arrested and you first called the other agents over until when Agent Castillo left?

A When I cam back -- I still don't follow the question right. You say, how long? was 20 --

THE COURT: How long were they away? Either way? How long? What amount of time? What amount of time were you away --

THE WITNESS: I was away?

THE COURT: Yes. When you left, how long were you gone?

THE WITNESS: A couple of minutes. Three minutes when I just went --

Q You came back and they were asking questions?

A Yes. They were talking to her. I don't know questions. They told me to stay on the side.

Q How long did that go on for?

THE COURT: You didn't hear what they were talking about?

THE WITNESS: They told me to stay on the side.

Q How long did that go on for?

A Quite a while. Ten, 15 minutes.

Q And then you started to ask the questions?

A That gentleman, Jerry had to go and the other agents, then I -- was asking questions.

Q Is it fair to say that from the time she was arrested until the time you started asking questions, about 15 minutes occurred?

A Something.

MR. KIMELMAN: I have no further questions.

THE COURT: I didn't understand that. From the time the arrest until the time he was asking questions, 15 minutes passed by.

THE WITNESS: The time I started asking questions, about 15 minutes.

3 Brea

THE COURT: They had been asking questions for 15 minutes before that?

THE WITNESS: They was talking and looking around, looking for apartment. Then Jerry --

THE COURT: They weren't talking to her all the time? Were they talking to her all the time? The defendant, that woman down there?

THE WITNESS: Once in a while, not all the time. Once in a while they used to talk to her.

THE COURT: When you started asking questions, did he tell you to tell her anything? What did he say to you when you started to ask questions? What did the agent say to you?

THE WITNESS: To ask her? He tell me ask her where this supposed to go. Where the furniture supposed to go and I ask her. Supposed to go to the furniture store.

THE COURT: Do you know whether the other agents Jerry, you call him Jerry, right? Do you know whether he asked the same question?

THE WITNESS: No, I don't.

THE COURT: You don't know. All right. What other questions did he ask you to ask?

THE WITNESS: Supposed to go to the -- who

supposed to go and pick it up. Supposed to go and pick up the furniture.

THE COURT: Do you know if the other -- Jerry asked that same question?

THE WITNESS: I don't know.

THE COURT: All right. You weren't there?

THE WITNESS: They told me to stay.

THE COURT: On the side?

THE WITNESS: Near the station wagon.

THE COURT: All right. When you started the questioning, did he tell you to tell her that she didn't have to talk to you if she didn't want to? Did the agent say anything to you about, you tell her if she doesn't want to talk right now, she doesn't have to talk? Did he say anything like that to you?

THE WITNESS: No.

THE COURT: Didn't say anything. All right. I have no questions. You may step down.

Any questions?

MR. BEZOZO: One question.

CROSS-EXAMINATION

BY MR. BEZOZO:

Q When you walked away, right after the arrest, did you walk out of sight of the defendant and the agent,

Jerry?

A If I walk away?

Q Yes. When you walked to the front of the building, to go to the other agents, did you walk away from -- out of sight of the defendant and Jerry?

A Oh, yes. I have to walk out.

MR. BEZOZO: Okay. All right. That's it. Step down.

J O H N N O E L L A W L E R, called as a witness, having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. KIMELMAN:

Q Do you speak Spanish?

A Very little.

THE COURT: Do you understand a little bit?

THE WITNESS: Very little.

THE COURT: Okay.

Q Now, by whom are you employed, sir?

A The Drug Enforcement Administration.

Q In what capacity?

A Special Agent.

Q Were you on duty on the 11th of September, 1974?

A Yes, sir, I was.

Q Were you present at the interrogation of a woman named -- known as Amparo Palaez de Garces?

A At the beginning part, yes, sir.

Q And do you recognize that woman in the courtroom today?

A Yes, sir, I do.

Q And would you indicate to us where she's sitting and what is she wearing?

A The woman sitting in the center over there, with the white sweater on.

MR. KIMELMAN: Your Honor, the record could indicate that the witness has identified the defendant?

Q And where did this interrogation occur?

A At our office at 555 West 57th Street.

Q And approximately what time?

A Between approximately 5:00 o'clock and 5:30.

Q Would you tell us the circumstances under which this interrogation occurred?

A I had been informed that the defendant had been brought in and that I was to go into the back room, advise her ofher rights and take a personal statement from her.

7 Lawler-direct

Q Is that standard porcedure after a defendant is arrested?

A Yes, sir.

Q And is this personal history form, does that have a number?

A Yes, sir. DEA-202.

Q Did anybody accompany you when you attempted to get this personal history?

A Yes, sir. An interpreter, Mrs. Ellen Corbing.

Q When you got into the room, was the defendant present?

A Yes, sir, I believe she was.

Q And would you tell us what transpired?

A I gave Mrs. Corbing a form that I carry, a yellow form. It's called a DEA-13. On it are the constitutional rights for a defendant. And I had Mrs.Corbing read those rights. In Spanish.

Q Does DEA-13, is that the standard form used by the Drug Enforcement Administration?

A Yes, sir, it is.

Q And did Mrs. Corbing read the defendant those rights?

A Yes.

Q And you of course didn't understand what she

A No, sir.

Q Did the defendant make any responses in Spanish to Mrs. Crobing when she read her her rights?

A Yes, sir. She replied affirmatively.

Q What did she say?

A Si.

Q And did you then proceed to take down the defendant's personal history?

A Yes, sir, I did.

Q This was done through Mrs. Corbing, is that correct?

A Yes.

Q In other words, you would ask a question in English, she would translate it, get a response and then you would write down the response again in English, is that correct?

A Yes. The first part of it. Then I just gave it to Mrs. Corbing and let her ask the questions.

Q Did this come at a time when any other agents entered the room?

A Yes, sir.

Q Who was that?

A Special Agent Juan Rodriguez.

Q When Special Agent Rodriguez entered the room,

how much time had elapsed from when the questioning of the defendant first occurred?

A I would believe, it would be roughly several minutes.

Q In other words, when you say several minutes, could you be --

THE COURT: Agent, can you tell me who determined whether this woman could spak any English whatsoever? Anybody determine that?

THE WITNESS: I asked her.

THE COURT: You asked her. Through the interpreter?

THE WITNESS: Yes, sir.

THE COURT: And she answered to the interpreter in Spanish?

THE WITNESS: Yes, as best I can recall.

THE COURT: No determination that she knew any English?

THE WITNESS: No, sir.

THE COURT: As far as you know?

THE WITNESS: As far as I know, no.

THE COURT: All right.

THE WITNESS: She openly spoke in Spanish.

10 Lawler-direct

BY MR. KINDLMAN:

Q Now, When Special Agent Rodriguez came in, did you say anything to him?

A Yes, sir. I told Special Agent Rodriguez that I had advised the defendant of her constitutional rights through Mrs. Corbing and that the 202 had been taken on her.

Q Did Special Agent Rodriguez then commence to question the defendant?

A Yes, he did.

Q Is Special Agent Rodriguez fluent in the Spanish language?

A I understand he is, sir.

Q And he didn't use an interpreter? He questioned her directly?

A He did it himself.

Q Was there any [illegible] when -- what did Mrs. Corbing do when Special Agent Rodriguez came?

A Special Agent Rodriguez said Mrs. Corbing she could leave.

(Continued on next page.)

DIRECT EXAMINATION

BY MR. KIMELMAN (Cont'd):

Q Did she in fact leave?

A Yes.

Q Was there any lapse in time between when special Agent Rodriguez began his questioning and when Mrs. Corbing stopped interpreting?

A Not really.

Q Are we talking about a minute or two?

A Yes, sir.

Q There was no lapse of say 15 minutes or a half hour, an hour, before Special Agent Rodriguez began his questioning?

A No, sir.

Q And you would say again, could you tell us how much time elapsed from when the defendant was first given her Miranda rights by Mrs. Corbing and when Special Agent Rodriguez walked into the room?

A I'd say no more than 15 minutes.

MR. KIMELMAN: I have no further questions of this witness.

MR. BEZOZO: No questions.

THE COURT: Step down.

(Witness excused.)

MR. KIMELMAN: Would you tell Mrs Corbing to come in?

MR. LANDER: Yes, sir.

E L L E N C O R B I N G , called as a witness, having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. KIMELMAN:

Q Is it Mrs. Corbing?

A Yes.

Q Mrs. Corbing, by whom are you employed?

A By the Drug Enforcement Administration.

Q And in what capacity, ma'am?

A I'm the interpreter there.

Q Were you acting as an interpreter on the 11th day of September, 1974?

A Yes.

Q Did you have occasion to interpret for a defendant known as Amparo Pelaez de Garces?

A Yes.

Q Do you recognize that individual in the Courtroom here today?

A Yes.

Q Would you indicate to the Court where she is

sitting and what she is wearing?

A The lady is wearing a white sweater and she is facing me.

MR. KIMELMAN: Your Honor, again --

THE COURT: All right. The defendant.

Q Now, do you recall the circumstances under which you first met this defendant?

A I was called in to read the rights to this lady.

Q Who else was in the room?

A John Lawler was in the room and another agent, Salvemini, Joe Salvemini. He is not here.

And after a while, he was relieved by Agent Ridriguez.

Q When you came into the room did you -- I take it that you are fluent in the Spanish language; is that correct?

A Yes.

Q and that that is the language that you normally translate at the Drug Enforcement?

A Yes.

Q You are fluent in other languages as well?

A Yes.

Q Did you read this defendant her rights off of

any card or did you do it by memory?

A Well, I translated it to her from an English card, and I asked at every point whether she understood and she said she did.

THE COURT: You didn't have a card with Spanish on it?

THE WITNESS: No.

THE COURT: Your card had English on it?

THE WITNESS: Yes.

THE COURT: The reverse side didn't have Spanish?

THE WITNESS: No.

THE COURT: Does that card have Spanish?

MR. KIMELSMAN: No, sir. This is in English. Your Honor, may we mark this for identification?

THE COURT: Yes.

THE WITNESS: I have since translated the regular rights into Spanish and I just gave it to one of the agents who had it on him outside.

THE COURT: Did you determine that she couldn't speak any English or you just were told to interpret?

THE WITNESS: I was told to interpret and I talked to her in Spanish.

THE COURT: Did she understand Spanish?

THE WITNESS: Yes.

THE COURT: Did you find that she understood anything else besides Spanish?

THE WITNESS: Well, she said yes, once in a while.

MR. BEZOZO: Excuse me. I'm having trouble hearing.

THE COURT: Yes. She said yes, once in a while, but couldn't talk.

BY MR. KIMELMAN:

Q Did she appear to understand anything in English at all?

A People understand a word once in a while. You can't rely on that.

THE COURT: You were satisfied she understood Spanish only?

THE WITNESS: She -- well, yes.

THE COURT: Spanish primarily?

THE WITNESS: Primarily.

THE COURT: Okay.

Q I show you what has been marked as -- is this a hearing exhibit?

THE CLERK: Yes. One.

Q -- Government's Exhibit 1 for Identification

and I ask you if this is the type of card that you read off of?

A Yes.

Q Does it contain the exact same information as the card that you read on that day?

A Yes. I guess this is the card I read to her on that day. It's Lawler's card.

Q And have you in fact used that card on other occasions to give defendants their rights?

A Similar. This or similar.

Q Now, did you read every single thing on that card and translate it from English to Spanish?

A Yes.

Q And after reading each question in Spanish, did you ask the defendant if she understood?

A Right.

Q And did you get a -- an affirmative response?

A Yes.

Q In every instance?

A Right.

Q And --

MR. KIMELMAN: Your Honor, at this time I'd offer this card in evidence.

THE COURT: Is that the Miranda rights card?

7 Corbing - direct

MR. KIMELMAN: Yes.

THE COURT: I'll take judicial notice of that card.

All in English?

MR. KIMELMAN: Yes, sir.

THE COURT: I'll take notice of it.

THE WITNESS: I have since made it up in Spanish.

THE CLERK: 1 in Evidence.

(So marked.)

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(Continued on next page.)

Q After you gave the defendant these rights in Spanish and she replied affirmatively that she understood, in Spanish, what occurred next?

A She was asked questions through me, and she answered through me.

Q Do you recall any of the questions that were asked?

A Identification -- Well, she was asked why she had bought the furniture in Colombia, and she said she was on vacation with her children, and she was there, and after a while she said that she wanted her husband to employ a lawyer, and she did not want to answer, and at which point Juan Rodriguez came into the room and released me.

Q And were you filling out any DEA Form as you were asking these questions about the personal history?

A I wasn't. The Agent did that.

THE COURT: When did you make this card up in Spanish?

How recently did you make it up in Spanish?

THE WITNESS: About two weeks ago.

Q Didn't you know that the FBI Agents had Spanish and English in front and on the reverse side on a card for the [illegible] three years -- at least three years that I know of that I am in this court?

THE WITNESS: Well, I don't think they were that satisfied with that version.

THE COURT: It is a lot better than nothing, isn't it?

THE WITNESS: It is better than nothing.

THE COURT: The Spanish on those cards, as far as giving the Miranda rights in Spanish --

THE WITNESS: We had something in Spanish that was there.

THE COURT: Didn't the Narcotic Agents have something on the card in Spanish and English before you made it up two weeks ago, Madam?

Either that, or they did not belong to the same Agency?

THE WITNESS: It wasn't that complete.

THE COURT: If I showed it to you, you would see how complete they were. I have been in quite a few of these narcotic trials, and they are pretty complete, so that even I understood what was on the back of that card.

All right, proceed.

Q You say, after a period of time, Juan Rodriguez came in?

A Yes.

Q How much time would you say had elapsed from when

you first translated these rights to the defendant, and then Mr. Rodriguez came in?

A Approximately thirty minutes.

THE COURT: How many?

THE WITNESS: Thirty.

Q So, from the time you read the rights to Mr. Rodriguez --

A Twenty-five to thirty minutes.

Q Could it have been slightly less, fifteen to twenty minutes?

A No, twenty-five minutes.

Q When Mr. Rodriguez came in, what did you do?

A I said goodbye and left.

THE COURT: You what?

THE WITNESS: I left. I took off.

THE COURT: Did you ask any questions in Spanish? Outside of giving the rights?

Did the Agent ask any questions through you of her?

THE WITNESS: Well, identification, and when she arrived, and why she had bought the things in Colombia, and she said she was on vacation with her children.

THE COURT: That was the answer to the inquiry?

MR. KIMELMAN: That is all I have of this witness.

THE COURT: Is that the extent of the questions that you heard?

THE WITNESS: Approximately.

Well, she said she would like her husband to get a lawyer, and she would not like to answer questions.

THE COURT: At that point?

THE WITNESS: Yes.

THE COURT: All right.

When Rodriguez came in, were you there when Rodriguez started to question her?

THE WITNESS: No. I left.

THE COURT: You don't know what transpired then?

THE WITNESS: No.

THE COURT: She told you she would like to have her husband get a lawyer?

THE WITNESS: Yes.

THE COURT: Did you relay that to the Agent?

THE WITNESS: Yes.

THE COURT: What was his answer to that?

THE WITNESS: Well, that was approximately it. I don't know if there were any answers to that.

THE COURT: All right.

You may step down.

(Witness excused.)

JUAN RODRIGUEZ, Special Agent, Drug Enforcement Administration, having been first duly Sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KIMELMAN:

THE COURT: I assume you speak good Spanish?

THE WITNESS: Yes.

THE COURT: I assume you spoke Spanish to this defendant here?

THE WITNESS: Yes.

THE COURT: The one with the white turtle-neck sweater?

THE WITNESS: Yes.

THE COURT: When you first asked her a question, did anybody tell you that she had asked for a lawyer just before you came in?

Did the Agent tell you that?

THE WITNESS: I was only advised that her rights were given to her.

THE COURT: Did she say, I want my husband and I want a lawyer?

THE WITNESS: No, sir.

THE COURT: Nobody told you that?

THE WITNESS: No, sir.

THE COURT: All right.

Now, you may ask your questions.

DIRECT EXAMINATION

BY MR. KIMELMAN:

Q Tell us, Agent Rodriguez, what questions you asked the defendant?

A I asked the defendant, Who did the furniture belong to, and she said she met a male named Jorge at some restaurant that she did not recall, and she said the gentleman offered her $100 to call Pan-Am and have the furniture delivered to some address in Queens to have it picked up.

Q Where did she tell you -- Did she say where she met this guy in the restaurant, in the United States, or South America?

Did she give any location of the restaurant?

A She mentioned Roosevelt Avenue.

Q Did she tell you she was in Colombia when she bought it?

A No.

Q She told you she met some guy in Jackson Heights?

A And he had asked her to make arrangements to have the furniture delivered to some address in Queens where it would be easy to pick up.

Q Did you ask any other questions?

A I asked her, Why didn't she have the furniture delivered where she lived, and she mentioned that the gentleman said it was too far for him to go there to pick up the furniture.

Q Did she give any name of this gentleman?

A Jorge.

THE COURT: Did you make a report on this?

THE WITNESS: No.

THE COURT: Did you make any report to anybody, the questions and answers given to you, are they encompassed in any report that you know of?

THE WITNESS: As far as I know, no.

MR. KIMELMAN: I will represent to the Court that as far as the Government knows, there are no written statements of this defendant.

THE COURT: I know that. I want to find out whether he did it or not. It is altogether a new area now.

Do you know that about five other Agents asked the same questions that you did?

Did anybody tell you that the same questions you asked were asked by other Agents, when she was arrested, and then another Agent asked her, and another Agent asked her the same questions?

THE WITNESS: No, sir.

Q Did you ask her any other questions?

A No, sir.

MR. KIMELMAN: I have no further questions.

THE COURT: I have nothing to ask.

Step down.

MR. KIMELMAN: That is the extent of the Government's witnesses.

THE COURT: Inter-office it is bad. Even together, they don't have the same story.

I will reserve decision until tomorrow morning.

* * *

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* * *

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-against- : 74-CR-579

AMPARO PELAEZ DE GARCES, :

Defendant. :

----------x

United States Courthouse
Brooklyn, New York

November 15, 1974
10:30 o'clock a.m.

B e f o r e:

HONORABLE MARK A. COSTANTINO, U.S.D.J.

GENE RUDOLPH
OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.,
United States Attorney
for the Eastern District of New York

BY: STEVEN KIMELMAN, ESQ.
Assistant U. S. Attorney

STEVEN BEZOZO, ESQ.,
Attorney for defendant

THE COURT: Call the case, please.

THE CLERK: Yes, sir.

Criminal cause on trial, United States v. Amparo Pelaez de Garces.

THE COURT: All right.

The Court is ready to render its determination.

MR. KIMELMAN: Your Honor, may -- will the Court hear argument first?

THE COURT: I don't think there is any need for argument. It is a question of the testimony given on the Miranda hearing and the Court heard that testimony and saw the witnesses, listened to the numerous inconsistencies among the agents themselves and is ready to make its determination as to the rights of this defendant.

Argument would not change this Court's mind, based on the testimony and the case law.

MR. KIMELMAN: Yes, sir.

THE COURT: The issue before this Court in light of United States Court decision in Miranda v. Tucker is whether defendant was deprived of her privilege against compulsory self-incrimination.

Statements made by her after her arrest must be suppressed because the warnings given her at the time of her arrest were woefully inadequate as to

deprive the defendant of her privilege against self-incrimination.

The statements made at the Drug Enforcement Agency office must likewise be suppressed because they were given after the defendant asked that her husband obtain an attorney and after she asserted her right to remain silent. Neither of these requests were honored by the agents in continuing to question defendant despite her claims of right.

The agents deprived defendant of her privilege against self-incrimination.

MR. KIMENMAN: Your Honor, may I inquire -- the statements made by the defendant prior to her request, that the questioning -- they are not suppressed; is that correct?

THE COURT: No. Everything is suppressed. All questioning by agents is suppressed.

MR. KIMELMAN: Your Honor, if I may then, there is no question that the defendant was given her constitutional rights by the Spanish Interpreter.

THE COURT: There is question.

MR. KIMELMAN: By Mrs. Corbing.

THE COURT: The inconsistencies in the method by which they were asked by the agents themselves --

MR. KIMELMAN: 57th Street only.

THE COURT: You mean, 9001?

MR. KIMELMAN: No, your Honor. I am referring to DEA Headquarters at 57th Street where the defendant was taken later.

Mrs. Corbing testified that she had the DEA card which she interpreted every question in the DEA card in Spanish to the Interpreter, which -- as your Honor judicially recognizes includes the full Miranda rights.

She also testified without any contradiction that after each question was interpreted to the defendant, under Miranda, the defendant said, "I understand."

Then a personal history was taken of the defendant and the defendant was asked where she got the merchandise. She said she got it when she was in Colombia, vacationing with her children. At that point after that was said, the defendant said, "I don't want to answer any more questions. And I want you to call my husband and get a lawyer." And then Mr. Rodriguez came in.

The Government -- the Court has rendered its decision that at that point questioning must cease and, of course, new Miranda rights must be given under U. S. v. Collins and the Government has no serious

quarrel with the Court's [illegible]

However, your Hon[illegible] the [illegible] personal history and as to the [illegible] bought the furniture while [illegible] vactioning occurred before [illegible] to answer anymore questions [illegible] would strongly urge the Court [illegible]

THE COURT: Those [illegible] will rule were voluntary [illegible] be admitted, just those.

MR. KIMELMAN: Very good.

THE COURT: Just those [illegible] That's my decision.

My decision is amended [illegible] exception that we just noted.

MR. KIMELMAN: Very good, Your Honor.

THE COURT: All right.

MR. BEZOZO: I guess that is it.

THE COURT: Yes.

MR. KIMELMAN: I understand that we are proceeding again at 10:30 [illegible] The Government would probably [illegible] witnesses. Maybe, possibly, Mrs. [illegible] testify in front of the jury [illegible] and one agent, Castillo, [illegible]

the general circumstance. Not as to any suppressed statements.

THE COURT: Not as to the statements.

MR. KIMELMAN: No. Not as to any suppressed statements. He would testify as to statements prior to arrest. But just general --

THE COURT: Her statements prior to arrest. She didn't make any statements prior to arrest. Just the headboard and said: You're under arrest.

MR. KIMELMAN: Just statements that he heard occurring during the events that transpired. Part of the res gestae of the events.

THE COURT: Very bad police work in this one. Knowing what they knew. Very bad police work.

MR. KIMELMAN: In that event, your Honor, the Government would -- to alert the Court, would at that time renew its motion as to the letter and would reargue the admissibility of the letter at that time.

THE COURT: It gets worse all the time.

MR. KIMELMAN: Then it's --

THE COURT: All right. We will go into the defendant's case, if necessary.

MR. KIMELMAN: Yes, sir.

MR. BEZOZO: Okay.

THE COURT: All right.

(Adjourned to November 18, 1974 at 10:00 a.m.)

* * * *

A 220

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-against- : 74-CR-579

AMPARO PELAEZ DE GARCES, :

Defendant. :

----------x

United States Courthouse
Brooklyn, New York

November 18, 1974

B e f o r e :

HONORABLE MARK A. COSTANTINO, U.S.D.J.

DANIEL D. SIMON
OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: STEVEN KIMELMAN, ESQ.
Assistant U.S. Attorney

-and-

RICHARD BREWSTER, ESQ.
Assistant U.S. Attorney

STEVEN BEZOZO, ESQ.
Attorney for Defendant

(The following occurred at 11:43 o'clock a.m.)

THE CLERK: Case on trial, U.S. versus Amparo Pelaez de Garces.

S:jm
R1

MR. KIMELMAN: The Government is ready, your Honor.

THE COURT: All right. Bring in the jury. The Government is ready.

THE CLERK: Just a moment, before you bring in the jury.

(The defendant thereupon entered the courtroom.)

(The jury thereupon returned to the courtroom at 11:45 o'clock a.m.)

THE COURT: All right, good morning. Now we are ready to start.

F R A N K B R E A , called as a witness, having previously been duly sworn by the Clerk of the Court, resumed the witness stand and testified further as follows:

DIRECT EXAMINATION

BY MR. KIMELMAN (continued):

Q Now, Mr. Brea, I would just like to clear up a few things you testified to when you were here on Thursday.

You had testified that the defendant had given the travel agency three hundred dollars, is that correct?

A Yes.

Q That was evidenced by Government's Exhibit 16

in evidence, this receipt from the travel agency. Do you know what the three hundred dollars was for? How that broke down?

A Yes, sir. Part of the money was going to be for our fee. And the rest of the money was in case we had to pay any duties at the Customs.

Q And was there any conversation with the defendant as to what you would do if there was any excess of the money, that is, if you didn't use the whole three hundred dollars?

A Mr. Salgado just heard some part of the conversation. I did not spoke to her directly.

THE COURT: He did not speak to her directly.

Q Now, there is also one other thing I would like to clear up, Mr. Brea, you said you had a conversation, you yourself had a conversation with the defendant on the 6th, I believe, of September where you talked about getting a letter from the furniture store?

A Yes, sir.

Q Now, will you tell us exactly what you said and what she said in the conversation?

A After I explained to the director of the company, to Mr. Hassan, what she needs, he told me explain to her what she needs. And I told her that she needs the letter

of a furniture store which was going to bring the furniture to and a broker.

Q In other words, she told you she needed a letter from any furniture store --

THE COURT: He told her. She didn't tell him.

MR. KIMELMAN: Yes, your Honor.

THE COURT: But that's not the question you asked him. She told you about the furniture store. That is not what you are asking him. That is not what he is saying. He said he told her you either have a broker or have a furniture store, isn't that right?

THE WITNESS: She needs a letter from the furniture store where the furniture was going to be delivered and a broker.

THE COURT: I know. But this is what you told her.

THE WITNESS: Right.

THE COURT: She didn't tell you.

THE WITNESS: No, I told her.

BY MR. KIMELMAN:

Q After you told her that, what did she say to you?

A She said that she didn't know nobody around that was a furniture store. If we could get a letter.

THE COURT: Did she tell you this?

THE WITNESS: Yes, to get a letter to bring the furniture. To make a letter that like the furniture would be going there. That she would pay any fee that is supposed to be paid.

BY MR. KIMELMAN:

Q In other words, she was going to pay you to get a letter from a furniture store?

A Yes, like if we had to pay the furniture store or anybody.

Q You told us on Thursday that you eventually got at least a piece of stationery from a furniture store?

A Yes.

Q That somebody, or Mr. Salgado, from your office typed up a letter?

A Yes.

Q But you don't remember what the letter said?

A No, I don't remember.

Q Now, Mr. Brea, after --

MR. KIMELMAN: Strike that.

Q You testified on Thursday that you saw the defendant being arrested, is that correct?

A Yes, sir.

Q After the arrest did you go anyplace with the

agents?

A Yes, sir.

Q Where did you go?

A We went to a drug store to call the office.

Q What was your purpose in calling the office?

THE COURT: Sustained. It can't bind the defendant what he did with somebody else. Sustained. I don't know what the purpose is.

Q Did you make a phone call?

THE COURT: You understand I make these rulings on the basis of evidence and nothing else. It is not what you believe or you should or should not hear. It is what the rules of evidence permit or do not permit. We must stay within those rules, otherwise we have problems. All right.

BY MR. KIMELMAN:

Q Did you make a phone call?

A Yes.

Q Did you talk to someone?

A At the office.

Q Who did you talk to?

A I spoke to Mr. Salgado and --

THE COURT: That's all. You can't tell us what you said and what he said. Nothing.

Q Now, I show you what has been marked as Government's Exhibit 17 in evidence and I show you a telephone number that has been written in what appears to be in pen on that. Did you write that number?

A Yes, sir, my handwriting.

Q When did you write it?

A The day that they made the arrest.

Q And what does that number represent?

A It is supposed to represent the telephone number of where Amparo, if she wasn't there or anything happened, use it to call or supposed to call, in case she was late, she wasn't there, getting in communication with her.

Q And did you write that number on Government's Exhibit 17 as a result of the conversation with your office?

A Yes, sir.

MR. KIMELMAN: I have no further questions of this witness, your Honor.

MR. BEZOZO: Excuse me one moment, your Honor.

(Mr. Bezozo thereupon confers with client through interpreter.)

(continued on next page)

CROSS-EXAMINATION

BY MR. BEZOZO:

Q Mr. Brea, on, I believe it was, Saturday, I don't recall the date, or the 6th of September --

A That is right.

Q Did you not have a conversation with the defendant at which time you informed her that they might possibly check the merchandise at the airport?

A Yes, sir.

Q At that time what did you tell the defendant?

A I told her she had to go over there and get a broker and bring a letter of the furniture store. And they said they had to check the furniture, make some holes there.

Q Could you repeat the latter part of that statement?

A They said they had to make holes in the furniture to check it out.

Q So in other words you did give the defendant some sort of indication that the furniture was being checked by the Customs?

A No, I said that they told me that they had to make holes to check them out.

THE COURT: To make what? I didn't understand that.

THE WITNESS: Holes.

THE COURT: H-o-l-e-s?

THE WITNESS: Yes, sir.

BY MR. BEZOZO:

Q And what did the defendant respond to that?

A And she said she doesn't care, that they can make holes so long they give her the furniture the way it is supposed to be, you know.

MR. BEZOZO: That's all.

THE COURT: That's all?

MR. KIMELMAN: Yes. No further questions.

THE COURT: Step down.

J E R R Y C A S T I L L O , called as a witness, having first been duly sworn by the Clerk of the Court, took the witness stand and testified as follows:

THE CLERK: State your name.

THE WITNESS: Jerry Castillo. C-a-s-t-i-l-l-o.

MR. KIMELMAN: Your Honor, if we may, may we have a brief side bar?

(The following conference took place between the Court and counsel at the side bar.)

MR. KIMELMAN: Your Honor, at this time, I would like to turn over 3500 material to the defendant relating to this witness.

THE COURT: Well, turn it over.

MR. KIMELMAN: I just want to mark it so it is identified for the record.

THE COURT: What do you need a side bar for in order to do that?

MR. KIMELMAN: I don't believe the 3500 should be turned over in front of the jury.

THE COURT: It has always been done before. Why not now?

THE CLERK: Grand Jury minutes marked as Government's Exhibit 3500-19 for identification.

(Article referred to was received and marked Government's Exhibit 3500-19 for identification.)

THE CLERK: Grand Jury minutes marked as Government's Exhibit 3500-20 for identification.

(Document referred to was received and marked as Government's Exhibit 3500-20 for identification.)

THE CLERK: Investigation marked as Government's Exhibit 3500-21 for identification.

(Document referred to was received and marked Government's Exhibit 3500-21 for identification.)

MR. KIMELMAN: All right, thank you.

(continued on next page)

DIRECT EXAMINATION

BY MR. KIMELMAN (Cont'd):

Q Now, sir, by whom are you employed?

A Drug Enforcement Adminstration, Bureau of Justice.

Q In what capacity?

A As a special agent.

Q And how long have you been so employed?

A Since April 30th of this year.

Q Now, sir, were you on duty on the 11th of September, 1974?

A Yes, sir.

Q Were you at Kennedy Airport on that day?

A Yes, sir.

Q Could you tell the Court and Jury what you were doing on the 11th of September?

A On the 11th of September, we were there on surveillance because there was some furniture we were supposed to deliver as soon as Frank Brea arrived with the station wagon we were supposed to deliver it.

Q Did you observe Mr. Brea arrive on the 11th of September?

A Yes, sir.

Q And did there come a time when you and

Mr. Breamade a delivery of furniture in question?

A Yes, sir. I was instructed by other agents to go with Frank Brea and deliver the merchandise to 9201 LaMont Avenue, in Queens.

Q And were you acting in an undercover capacity at the time?

A Yes, sir.

Q Did you in fact go to the vicinity of 9201 LaMonte Avenue, in Queens?

A Yes, sir.

Q Tell us approximately when that occurred?

A At approximately 3:15 p.m., Frank Brea and I arrived at 9201 LaMonte Avenue where Mrs. deGarces was waiting for us outside. She walked over to the car and instructed Frank Brea to back up the vehicle in back of 9201 LaMonte Avenue, where the garage was situated.

Q Now, sir, can you identify Mrs. de Garces in the Courtroom?

A Yes, sir. she is in the white blouse and red shirt.

Q And where is she sitting?

A Next to another female with a brown sweater.

MR. KIMELMAN: May I ask that the record reflect that the witness has identified the defendant?

THE COURT: Yes.

BY MR. KIMELMAN:

Q Can you describe this building for us at 9201?

A Yes, it's a 10-story apartment building.

Q After the defendant directed you to go to the back, did you in fact go to the back?

A Yes. We parked the vehicle in the rear and we started unloading headboards from the car.

Q And how many packages did you have with you?

A We had two crates, the bedboards and the slats or the rails.

Q And did you take both of these crates from the car?

A Yes. We first unloaded the slats or the footings of the bed and we placed it near the building. We had taken it out and I asked Mrs. deGarces if she wanted it brought upstairs and she said, "No, just leave it right there."

We proceeded to unload the back of the boards where the cocaine was secreted and I asked her again if she wanted the bedboards brought upstairs and she said, "No, that's quite all right," and so we leaned the bedborads against the back of the create, leaned it against the building.

She then immediately went and observed the crate which was opened.

Q Which crate was this?

A This was where the back of the boards were, where the exhibit was secreted inside.

Q When you say the bedboards, do you mean these exhibits here, Government's Exhibits 6 through 9?

A. Yes.

Q Proceed.

A She walked over to that exhibit and she examined them. She noticed that the crate was opened and she noticed that --

THE COURT: You know she noticed or she said something?

THE WITNESS: No. It was all open.

THE COURT: How do you know what she noticed? You can't tell what people are noticing.

THE WITNESS: All right. I observed she looked into the crates and --

Q Did she say anything to you after she looked inside?

A Yes, she said that the foot was chipped, the foot of the bed was chipped and she said that's okay, it probably could be fixed.

Q And how would you describe the defendant's appearance at this time?

A I noticed she was a little nervous because she was fooling around or juggling a package of cargettes and she was constantly moving it up and down.

Q Now, you say she appeared to be a little nervous. Would you say she was very nervous, a little nervous? How would you describe it?

MR. BEZOZO: Objection.

THE COURT: Sustained.

Q Did the defendant indicate to you what was going to happen to these particular beds or crates?

A Not at this time. Again, I instructed if she wanted the beds brought into the apartment, and she said no, that is quite all right, just leave it where it is

She handed Frank Brea and myself $10 a piece.

Q You each got $10?

A Yes.

Q Did you give the defendant anything to sign?

A Yes. At that time I asked her to sign a receipt of Air France and she did so.

Q Did you explain to her what she was signing?

A No, sir. just a receipt.

Q Did you tell her she was signing a receipt?

A Yes, and if her name Amparo Pelaez de Garces and she agreed that was her name and I placed her under arrest.

Q Did you witness the defendant signing this receipt for the merchandise?

A Yes, sir, I did.

THE CLERK: Document marked for identification as Government's Exhibit 22.

(So marked.)

Q I show you what has been marked as Government's Exhibit 22 for identification and I ask you if you can identify this?

A Yes, sir, this is what she signed.

Q Is that the receipt you handed her for the merchandise on the 11th of September?

A Yes, sir.

MR. KIMELMAN: Your Honor, I would like to offer this in evidence.

MR. BEZOZO: No objection.

THE CLERK: Government's Exhibit 22, previously marked for Identification, now marked in evidence.

(So marked.)

BY MR. KIMELMAN:

Q And after she accepted delivery of the merchandise you arrested her; is that correct?

A Yes, because she just wanted it left there.

Q Now, did you make any attempt to see if the defendant lived at 9201 LaMonte?

A Yes, sir. I and a couple of other agents went inside the building to try to locate another co-defendant.

Q And were you able to determine if the defendant did live at 9201 LaMonte?

A Are you talking about Mrs. deGarces?

Q This defendant.

A Yes. We found out that she didn't live there.

MR. KIMELMAN: I have no further questions of this witness, your Honor.

MR. BEZOZO: No questions, your Honor.

THE COURT: No questions. Step down.

(Witness excused.)

MR. KIMELMAN: I apologize. The next witness is waiting in my office. She will be right down.

E L L E N C O R B I N G , called as a witness, having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. KIMELMAN:

Q Mrs. Corbing, by whom are you employed?

A Drug Enforcement Administration.

Q And in what capacity?

A As interpreter.

Q And how long have you been an interpreter with the Drug Enforcement Administration?

A Three years and eight months.

Q Could you tell us what languages you are fluent in?

A French, German, Spanish and English.

Q I xcall your attention to the 11th day of September, 1974, were you acting as an interpreter on that date?

A I did.

Q Was it in connection with the defendant Amparo Pelaez de Garces?

A Yes.

Q Do you recognize that individual in the Courtroom today?

A Yes, I do.

Q Could you point that individual out for us? Tell us what she is wearning.

A The lady is facing me. She is wearing a white sweater and a small sweater over it, red.

MR. KIMELMAN: May I ask that the record reflect that the witness has identified the defendant?

THE COURT: Yes.

Q Could you tell us the circumstances under which you met this defendant on the 11th of September?

A I was called in to the detention room and I was asked to give the lady her rights, which I did.

Q And when you gave -- I take it these are constitutional rights?

A Yes.

Q And had you ever given these rights to other defendants before?

A Yes.

Q And when you gave the constitutional rights on this occasion, did you do it from memory or did you read it from some place?

A I read it and I phrased each question and asked whether it had been understood.

Q And after each question that you read, did you ask the defendant if she understood?

A Right, I did and she said yes.

Q And she said yes in response to every question that she understood?

A Yes.

Q And did she agree to speak to the agents at that time?

A Yes, she did.

Q Now, Miss Corbing, I want you to tell the Court and Jury exactly what questions you asked the defendant and what responses she gave to you, to the best of your recollection

A She was asked where she bought the furniture.

Q What did she respond to you?

A In Colombia.

(Continued on next page.)

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DIRECT EXAMINATION

BY MR. KIMELMAN: (Cont.)

Q Go ahead.

A She was asked why she bought it in Colombia and she said that she was there on a vacation.

Q Was she asked anything about the cocaine?

A Yes. She was asked whether she knew that the cocaine was inside the furniture and she said no, she didn't.. Then she was asked whether it belonged to her and she said no, it didn't.

Q When you say "it," what are you referring to?

A The stuff, the cocaine.

Q She said no, that didn't belong to her?

A It didn't belong to her and she didn't know it was there. Then she was asked whom it belonged to and she said she didn't know.

She was asked to make a guess, to whom do you think it does belong and she said she assumed it belonged to -- first she gave a first name, a Spanish name which I don't remember.

Q The question was, who do you think it belonged to and she responded with a Spanish first name?

A Correct.

Q And you don't recall what that name was?

A No, I don't. I'm sorry.

Q Go on.

A She was then asked for the man's last name and she didn't remember that.

Q Was she asked where he lived?

A Yes, and she said in Queens and afterwards she was asked for the exact address and she said, well, the man had moved and she didn't know where.

Q Was there any explanation given as to what this man had to do with the furniture?

A No. The furniture, I think, was consigned to him.

Q Now, was she asked anything about any conversation that she may have had with this gentleman?

A She said that he was aware that the furniture was coming in.

Q And was there any reference made to any conversation that she had had with him?

A It was a telephone conversation she had had with him.

Q Did she give you any details of that conversation?

A No. But she said that he was going to call her.

Q And you just testified that she said he was aware that the furniture was coming; is that correct?

A Yes.

Q Now, Mrs. Corbing, did you ask the defendant where she lived?

A There was a Valley Stream address.

Q In other words, she said she lived in Valley Stream and she gave you a certain address?

A Yes.

Q Do you recall what address she gave you in Valley Stream?

A No. It was written down. I don't recall the exact address.

Q And how long were you with the defendant?

A Approximately 25 to 30 minutes.

Q And how would you describe her general demeanor during that period of time?

A Well, she was cooperating and she didn't appear to be overly nervous.

Q She seemd somewhat nervous but not upset? Would that be a fair characterization?

A Right.

Q Was she aware of the surroundings, the people that were around the room, whom she was talking to?

A I am sure she was.

Q Did you introduce yourself to her before you started talking to her?

A Yes.

Q Did you introduce her to the other people in the room who were asking her questions?

A Yes.

Q During this 20 or 25 minutes period did at any time, did the defendant -- did she appear to understand English at all?

A She said yes, several times and she did answer directly to some very simple questions that were posed to me for translation.

Q In other words, she answered the question before you translated it; is that correct?

A Yes, but they were simple questions. I couldn't tell you her knowledge on it.

Q You don't know the extent of her knowledge to understand English?

A No.

Q But she did appear to understand some English?

A Yes.

MR. KIMELMAN: I have no further questions.

MR. BEZOZO: I have no questions.

5 THE COURT: Step down.

(Witness excused.)

MR. KIMELMAN: Your Honor, at this time, the Government would request that the jury be excused so that the Government may argue a point of law.

THE COURT: All right.

Step out, please.

(The jury withdrew from the courtroom at 12:22 p.m.)

MR. KIMELMAN: With the exception of, possible exception of testimony that would come in with the letter that the Government previously offered, the Government has no additional witnesses on its direct case. The Government submitted a supplemental memorandum of law to the Court on this issue this morning and I don't know if the Court has had an opportunity to review the memorandum of law.

THE COURT: I have looked at it.

MR. KIMELMAN: Very good, your Honor. At this time, your Honor, the Government believes there is certainly sufficient evidence before this Court based on the defendant's statements that were just made by this last witness, and particularly

the fact that the airway bill in evidence which indicates that the merchandise was sent to 5155 Van Kleen Street, Apartment 5C, is the exact same address that is used in the letter that the Government wishes to introduce into evidence.

The Court may take judicial notice of the fact that there is no such correct spelling of the street Van Kleen in Elmhurst, Queens, and that the correct street, and the Government would be happy to provide the Court with testimony or in fact a local zip code directory, that the correct spelling for that address is Van Cleek, C-l-e-e-k.

THE COURT: I know nothing about Queens. I don't know where they are located. I don't have the slightest idea if it is the proper spelling. It is not the same as a legislative matter or a statute or ordinance.

MR. KIMELMAN: Very good, then, your Honor, the Government is prepared to call a representative of the Post Office to the Court on making a representation based on my own knowledge and my own investigation that it seems more than mere coincidence that the original destination of this merchandise and the letter in question setting out which the Government feels is the conspiracy both have the

exact same misspelling of a street in Queens indicating that since this defendant's name was on the airway bill that this defendant, -- leaving an inference that this defendant had some prior conversation with the person who wrote the letter and as a result of --

THE COURT: She told them how to misspell it both times.

Is that a fair inference to draw?

MR. KIMELMAN: There is testimony that the defendant lives in Valley Stream and may not have been familiar with the streets in Queens and that both parties,apparently the party who sent this letter --

THE COURT: Whoever shipped them out or whoever wrote the letter in Bogota, Colombia, is even less familiar. I don't know if he had any post office zip code book down there.

MR. KIMELMAN: That's correct.

The Government feels that a fair inference is --

THE COURT: There are two inferences that can be drawn: One of innocence and one of guilt. The Court must of necessity draw that of innocence and that's the law and I won't change it in this

8 case.

You keep asking me to draw inferences. A case of this type couldn't be tried on inferences or presumptions but factual basis proving this witness beyond a reasonable doubt has some knowledge.

MR. KIMELMAN: The Government is offering circumstantial evidence.

THE COURT: Sure, even circumstantial evidence has to be beyond a reasonable doubt.

MR. KIMELMAN: The test for the Court's --

THE COURT: The standard as to the letter is something different. We are talking about guilty or innocence of the defendant.

MR. KIMELMAN: The Government is not arguing the guilt or innocence of this defendant but simply the test under the Second Circuit that a fair preponderance of evidence shows that this defendant was in some type of illicit association with other individuals so that conversations arising out of that illicit association may be admitted into evidence.

THE COURT: What do you understand the fair preponderance of the evidence is? I know what it is. Tell me.

MR. KIMELMAN: A fair preponderance is not

9 proof that this defendant participated in a conspiracy beyond a reasonable doubt. The Government may --

THE COURT: That's not the rule. That's not what fair preponderance means. It goes as to the weight as to whether the balance is in favor or not when it tips the scale to such a degree that the tipping of the scale would preponderate in one favor of the other.

MR. KIMELMAN: I understand that. I attempted to state it in the negative.

THE COURT: You can never state fair preponderance in the negative. It is never in the negative. Once it is in the negative it has to preponderate in favor of the other side.

MR. KIMELMAN: Based --

THE COURT: That's what your problem here is based on, fair preponderance of the evidence and I don't disagree with you.

MR. KIMELMAN: The weight shows that under the rules --

THE COURT: Of such a convincing nature that it would tip in favor of the party.

MR. KIMELMAN: Under Ragland it is only necessary to show there is a likelihood of an assodation.

(Continued discussion out of hearing of the jury.)

It must be preponderant.

Taking the testimony that the Government has presented in its most favorable light, if it does not tip the scales, even if it is balanced, you cannot have a preponderance of evidence because preponderance means it must weigh in favor of.

MR. KIMELMAN: I agree with the Court.

THE COURT: Now, we will go to the cases you cite. The case you cited is about a supplier and it was some independent proof, number one, that he supplied the glassine envelope for the heroin in that case.

We don't have anything like that here. We have a pick-up.

MR. KIMELMAN: We have a pick-up, not a mere pick-up that this individual did not know the furniture was coming.

All the evidence the Government presented, taking it in its favorable light, this defendant purchased these beds while in Colombia.

There was a sales receipt in evidence, a shipping bill, and defendant's actual receiving the merchandise when it arrived.

THE COURT: You wouldn't argue with the Court

that the purchasing of bedboards is illegal.

MR. KIMELMAN: There is certainly an inference that an individual who purchases five bedboards for whatever reason that there is certainly the inference that that individual who then arranges with apparentely a third party to ship them from Colombia that that individual knows what is going to be inside them.

THE COURT: You argue your own case, Mr. Bezozo. I only answer him on law and not on fact.

MR. KIMELMAN: AT least if the Government's evidence is taken in its favorable light there is a likelihood that this defendant was importing cocaine.

THE COURT: All right.

MR. KIMELMAN: The Government believes the evidence shows it would be impossible for this defendant to import the cocaine unless there was some assistance from other parties.

The reason I state this is, number one, the address as I stated first, it was to be delivered to Van Klean Street, and second it was delivered to Lamont STreet and neither address is where the defendant lived, and secondly, the defendant's statement that there was another individual involved and this other individual knew the furniture was coming in and that this individual would know she would think this individual would know there was cocaine inside.

These are the statements just placed before the Court.

MR. BEZOZO: The defendant is not denying the statements made in front of Mrs. Corbing. I think she can explain them away, though.

MR. KIMELMAN: The question is --

THE COURT: Right now we are talking about whether the letter should go into evidence.

MR. KIMELMAN: It is not a question of explaining them away. It is a question of whether the Government has established a fair preponderance of the evidence that this defendant associated with someone else in an illicit venture.

Certainly if you take the evidence at face value there is more than a fair preponderance of the evidence that has been shown.

THE COURT: You stated U.S. versus Ragland. You cited a proposition of permitting this to be submitted into evidence on the basis of association.

MR. KIMELMAN: That is correct.

THE COURT: Association with whom? I am trying to find out.

MR. KIMELMAN: With the individual --

THE COURT: I haven't heard anything but bedboards. There is no other name in this case except

the defendant.

MR. KIMELMAN: Association with individuals who wrote the letter in question and who the letter was addressed to but never received, an association with this unnamed individual that Mrs. Corbing just testified to.

THE COURT: Well, let us look at Ragland. The salient parts of the Court's opinion, under subdivision 2, admissibility of hearsay declarations, in one portion on page 476, and we won't take it out of context, but just the salient statements. "It is clear that such statements are inadmissible when no independent evidence links the declarant to the defendant, and equally clear that once some conspiracy, agency or concert of action is independably shown, hearsay statements made in furtherance of such relationship are admissible, however, the independent evidence need not as appellant suggests be so clear and convincing as to compel absent contradiction, a finding of the fact sought to be proved."

You quoted this part, "The threshold requirement for admissibility is satisfied by a showing of a likelihood of an illicit association between the declarant and the defendant, although it might later eventuate that the independent evidence so admitted

proves to be insufficient to justify submitting to the jury the issue of defendant's alleged guilty involvement with the declarant and the defendant."

Then we go on to another portion, "It is true" -- page 477, and likewise the middle of the page, "it is true that an association with an alleged conspirator without more information is insufficient to establish the necessary foundation for admissibility of the incriminating statement."

A little further down, the same case, "The accused must in some sort associate himself with the venture, participate in it as in something he wishes to bring about, seeked by his action to make it succeed. Such association must be shown by possession and transportation of the subject matter of an illicit transaction plus participation in the proceeds thereof."

So we just don't have isolated statements that you are making, inferences. We have concrete statements as to what must be shown.

Further down, on page 478,it says, "Moreover," reading again from the same case, "frequent interchangeable reference by Wilson to Bill to my man created a strong inference that appellant whose identity is Bill was established when Wilson so

addressed him on the evening of January 20th and indicated that Bill had given to Wilson the non-narcotic powder, Wilson in turn delivered to Valentine, was in fact not a mere casual facilitator but Wilson's supplier."

There is something a little bit more. The final requisite is, and then defendant subsequently produced the glassine envelope that Wilson delivered to Valentine as being narcotics, and you are using this case which is altogether, the principles of law, do not fit with us.

MR. KIMELMAN: They fit with us absolutely.

THE COURT: Well, you disagree with the Court.

MR. KIMELMAN: Can you say the evidence presented to the Court and jury during the last few days that this defendant was a mere innocent by-stander?

THE COURT: The only thing this Court will say about the defendant in any case is whether the Government or the defendant has ever proven the items they suggest to prove. It is not for me to determine the guilt or innocence of the defendant.

MR. KIMELMAN: We are not talking about guilt or innocence.

THE COURT: It is always a matter of proof

before a court and a matter of whether you meet the requirements of evidence.

MR. KIMELMAN: You are talking about taking the Government's evidence in the best possible light to decide this particular issue.

THE COURT: That is exactly what I am doing. I have looked through your brief and I read your brief and I recited it on the record and I have shown the disagreement that I have with you. I still at this point find that the evidence tendered before the Court is not sufficient to permit the admissibility of this letter.

MR. KIMELMAN: If I may continue on the evidence that was presented before the Court --

THE COURT: I have made my ruling. I gave you sufficient time to argue.

MR. KIMELMAN: I don't believe you have the full argument as to the facts elicited by the testimony --

THE COURT: You mean I have not been listening?

MR. KIMELMAN: No, your Honor.

THE COURT: You wouldn't say that about me, would you?

Now, Mrs. Corbing added on things today that she did not say the other day. Would you like to

review the record on what she said Thursday or Friday?

MR. KIMELMAN: She wasn't asked those questions.

THE COURT: She was asked what questions did you give and what answers did you receive and she added five different answers that she did not give on Thursday. I was here.

MR. KIMELMAN: I was here also.

THE COURT: Don't ever do that to me again.

Would you want the minutes on Thursday to see the difference in her testimony between three days?

MR. KIMELMAN: I am not questioning that.

THE COURT: I have made my ruling and the letter at this point is still not admissible under the hearsay rule for co-conspirators.

MR. KIMELMAN: All I was intending that the Court was not taking the opportunity to even read the letter in question --

THE COURT: How can you make a statement like that? I even know her telephone number in there. Isn't that strange?

I can tell you about that letter.

I can even tell you he says love in there.

Don't ever take this Court to task for not knowing what is going on.

I come out here prepared, you know.

MR. KIMELMAN: When I offered you the letter the other day you said you did not want to look at it.

THE COURT: I did not want it at that moment. You are not going to presume this Court does not look at the material before it, are you?

All you are doing is making a better record for me.

I know what that letter says.

MR. KIMELMAN: In view of the Court's ruling, the Government rests.

THE COURT: You will have to wait for the jury to come in to rest.

(The jury entered the courtroom at 12:40 p.m.)

MR. KIMELMAN: The Government at this time rests.

THE COURT: All right, ladies and gentlemen, you will have to step out again.

(The jury withdrew from the courtroom at 12:41 p.m.)

(Out of hearing of the jury.)

THE COURT: If you look up that letter five sentences up from the bottom is where her telephone number is.

MR. KIMELMAN: It is not her telephone number but there is a telephone number there.

I just don't remember the Court reading the letter.

THE COURT: You don't know what I am looking at.

MR. KIMELMAN: I didn't realize the letter was even in the Court's possession.

THE COURT: It is right in the file.

MR. BEZOZO: I would like to make a motion for a dismissal.

MR. KIMELMAN: I would like to know the grounds.

MR. BEZOZO: I don't think the people have shown that the defendant had knowledge of what was in the beds. I cannot see how they have proved their case, proved a prima facie case at all.

THE COURT: He said you failed to establish a prima facie case to go forward with it on the defendant's side.

MR. BEZOZO: I think the whole question in this case is knowledge on the part of the defendant. There is no question on that and I think Mr. Kimelman will bear me out.

MR. KIMELMAN: First the Government has shown that this merchandise containing the cocaine was imported from places outside the United States, as charged, and it was imported without question on or about the time, that it was the merchandise on the

face of the Government's evidence that was purchased by this defendant, was consigned by this defendant, that this defendant paid an inordinate amount of money, she paid approximately $500 for the bed, $156 for the shipping and gave the travel agency $300. She said to them there would be no more problem with any additional money. There were two false addresses given as to where the merchandise was to be delivered and the defendant on the second count accepted delivery of it and just on the face of the brief facts I have recited there is more than sufficient evidence to go to the jury and the jury can draw inferences from this as to whether to find the defendant guilty or innocent.

THE COURT: Decision reserved. I will be back in five minutes.

(At this time there was a brief recess declared.)

(Continued next page.)

AFTERNOON SESSION 222

2:15 P.M.

(The following occurred at 2:22 p.m. in the absence of the jury.)

THE COURT: The motion at this time is denied.

MR. KIMELMAN: If I may, with the Court's permission and with Mr. Bezozo's permission, I forgot to enter the stipulation that the substance is cocaine into evidence.

THE COURT: Oh, yes.

MR. KIMELMAN: I would like to reopen the case to put that in.

THE COURT: If an expert were called he would testify that the matter involved was cocaine.

MR. KIMELMAN: Yes. And I would like to read it as part of the Government's case.

THE COURT: You can read it at any time. It is stipulated to. I just placed it in on your side of the case. It is stipulated that the substance that was involved was cocaine. You may read that to the jury at any time.

MR. KIMELMAN: No, Mr. Bezozo had entered into a written stipulation that we both signed.

THE COURT: Then just mark that. Why don't you just mark the stipulation.

MR. KIMELMAN: Yes, sir.

THE CLERK: Stipulation marked in evidence as Government's Exhibit 23.

(Document referred to was received and marked Government's Exhibit 23 in evidence.)

MR. BEZOZO: Your Honor, can I have about five minutes?

THE COURT: You want five more minutes? All right, go ahead.

(Mr. Bezozo thereupon conferred with his client through the interpreter.)

MR. KIMELMAN: Your Honor, I have also asked the court interpreter to be present and interpret if the defendant should take the stand.

THE COURT: I don't know what he is going to do yet.

MR. KIMELMAN: Mr. Bezozo is ready.

MR. BEZOZO: Yes.

THE COURT: All right, bring the jury in. You may read the stipulation as soon as the jury comes in.

MR. KIMELMAN: Thank you very much.

(The jury thereupon returned to the courtroom at 2:30 p.m.)

THE COURT: All right, we are ready to proceed.

We are actually on the defendant's case but the Government has a stipulation that they want to read to you first.

MR. KIMELMAN: This would be Government's Exhibit 23 in evidence.

"It is hereby stipulated, consented to and agreed by and between the undersigned that if Stanley Blasof, a chemist employed by the Drug Enforcement Administration, were called to testify he would testify that the substance that was seized on September 9, 1974, sealed within a shipment of wooden furniture, consigned to the defendant Amparo Pelaez De Graces, and marked Government's Exhibits 10 through 10-I and Government's Exhibit 14, have been chemically analyzed as follows:

"(a) Government's Exhibits 10 through 10-I contain 1561.1 grams (approximately three pounds of cocaine hydrochloride with a purity ranging between 30% and 58.2%.

"(b) Government's Exhibit 14 contains 13.7 grams of cocaine hydrochloride with a purity of 5.23%."

It is dated "Brooklyn, New York, November 12, 1974." And it is signed by myself and by Mr. Bezozo.

THE COURT: All right.

MR. KIMELMAN: May I ask for a brief instruction to be given to the jury as to what a stipulation is?

THE COURT: Well, they agree that if the chemist were called that he would say it is cocaine after putting it through its proper tests. That is the stipulation. They agree on that. Without conceding, of course, that this had anything to do with the defendant. Do you understand that? There is no proof as to this defendant.

Now, we are on the defendant's case.

MR. BEZOZO: Your Honor, I would like to call the defendant to the stand.

THE COURT: First swear the interpreter.

THE CLERK: Do you solemnly swear that you shall well and truly interpret the oath to be administered to the witness and all questions which shall be put to him or her, by the Court or counsel, and you shall also well and truly interpret the answers of the witness to the questions which shall be put to her, so help you God?

THE INTERPRETER: Yes, I do.

THE COURT: State your name.

THE INTERPRETER: Joaquin R. Guma.

THE COURT: Swear her in.

THE CLERK: You do solemnly swear that the testimony you shall give to the Court and jurors in the cause on trial shall be the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS (Through the Interpreter): I swear.

THE COURT: Tell her to give her name.

THE WITNESS (In English): Amparo Pelaez de Garces.

A M P A R A P E L A E Z d e G A R C E S, called as a witness, having been first duly sworn by the clerk of the Court (through the interpreter), took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. BEZOZO:

Q Mrs. de Garces, on approximately the 23rd of June of this year, did you not make a trip to Colombia with your children and friend?

A With my kids; with my friend and my kids.

Q Yes. And did you not at the time of your stay in Bogata two days, then proceed to Madellia?

A Yes.

Q Did there not come at one time that while you were in Madellia, Colombia, you met a gentleman by the

name of William Valeacia?

A Yes.

Q Where did you meet him?

A At an office where money is being exchanged.

Q And would you tell the Court what occurred at the time that you met him?

A I went there on three or four different occasions to exchange dollars. And he asked me whether I had any convenience in receiving for him some beds that he wanted to send to this country for a friend. That he would get them over here.

Q What did you respond to that?

A I asked him why was he sending those beds over here. And he said to me that they were samples.

Q And did he give you any further information about whom the beds were to go to in the United States?

A He said to me that a man was supposed to call me and tell me exactly when the beds were supposed to get here.

Q And what reason did he give for the fact that you were receiving the beds rather than this third party, Mrs. de Garces?

A Because I was a resident of this country.

Q And what benefit was that for him, that you

were a resident of the United States?

A Because the delivery would be far easier if that delivery was made to me.

Q Were you in fact told that the third party who was supposed actually to get the delivery of the beds was not a resident of the United States?

A Yes, I was told.

Q And is that the reason that you were asked to accept delivery of the beds?

A Yes.

Q Did you purchase the beds yourself?

A No.

Q What happened after you agreed to accept delivery of the beds? What did Mr. Valencia say?

A He said to me that he is going to send the necessary documents to the man over here. As soon as they would get here that man was to notify me.

Q Did you not return to the United States on August 25, 1974?

A Yes.

Q And what did you do upon your return to the United States, as far as the beds were concerned?

A Well, about six days later a man called me up and he said to me that at 90th Street and Roosevelt we were

supposed to meet there and he would give me the documents, the papers and also the money, so I could take it to the agency, and to take it over there.

Q Now, when you say he was supposed to give you the paper, what paper do you mean?

A Well, the paper that said -- the receipt saying I had to go and pick it up at the airport.

Q And what was he to give you the money for?

A He gave me $300 so I could take that money to the agency for expenses. And I deposited that money in the agency.

Q What happened after your meeting with this man at 90th Street and Roosevelt Avenue?

A He gave me the address of the agency that I was supposed to go to. And then I went to that agency. I handed in that paper and I was told to go to the airport.

Q Excuse me? What was that last part?

A He gave me the address of the agency. I took that receipt to the agency. And in the agency I was told that they were going to the airport to pick up the beds.

Q Did there come a time when you went back to the agency a second time, Mrs. de Garces?

A Yes, because on that Saturday I went to a

doctor and he told me that I had to be hospitalized. And from that agency on that Saturday I went to pick up the beds so I could deliver them to that man.

Q What happened when you went back to the agency?

A They told me that it was a Saturday afternoon. Nothing was delivered in the airport. There were no deliveries made in the airport.

Q Did they tell you anything else about why the beds couldn't be delivered or received, excuse me?

A Because the persons that went for the merchandise that they -- the persons that were supposed to see if there was anything wrong with the merchandise, they wouldn't work on Saturdays.

Q So you were in fact told that they couldn't pick up the beds due to the fact that they might be inspected, the beds?

A Yes. They told me that they wanted to inspect the beds because they thought there was something inside those beds.

Q What occurred then?

A Later that afternoon I was hospitalized.

Q When did you leave the hospital?

A I went out of the hospital on Tuesday around four p.m. in the afternoon.

Q I believe that would be September 10th?

A Yes.

Q The day before your arrest?

A Yes.

Q Did you hear from this third party prior to your arrest?

A Of what person?

Q To your knowledge, what was the name of the person who was actually supposed to receive the beds?

A Jorge Rodriguez.

Q Did you hear from him after leaving the hospital?

A He telephoned me and he asked me what is going on, that he needed those beds urgently.

Q After you left the hospital did you contact the travel agency about picking up the beds?

A Oh, yes, I telephoned them.

Q And what did they say?

A That they were going to pick up the beds in the afternoon.

Q And what was your reply?

A Well, they already had the address to where the beds were supposed to be sent to.

Q Which address is that?

A I don't recall the address. The address was placed inside an envelope and was sent to the agency.

Q What happened on Wednesday, September 11th?

A After I called the agency, about an hour later, the man called me back on the phone and I said to him that they are already on the way to pick up the beds. And I said to him that from the airport they were going to take them to his apartment.

Q Were you present at the time that the beds were delivered?

A Myself? I?

Q Yes.

A Was I present when the beds were delivered?

Q Yes.

A Yes.

Q Did you hear from this Jorge Rodriguez?

A Hear what, regarding what?

Q Did he call you just before or just after --

A Yes. He called me before and I told him that they had already told me that the beds were on the way to his apartment.

Q What further did he say?

A He asked me whether it would be all right with me for the beds to stay with me at my address and he would

come over and pick up the beds about an hour later.

Q Is that the reason that when the beds were delivered you informed, I believe Mr. Castillo to leave the beds downstairs?

A Yes.

MR. BEZOZO: No further questions.

CROSS-EXAMINATION

BY MR. KIMELMAN:

Q Mrs. de Garces, where do you live?

A 44 Rutherford Avenue.

MR. KIMELMAN: Perhaps she could write it down.

MR. BEZOZO: May I help?

THE COURT: Yes.

MR. BEZOZO: She is trying to say Railroad Avenue.

THE COURT: Where is that?

THE WITNESS: Valley Stream.

Q How long have you lived there?

A It's going to be four years.

Q Are you employed?

A Yes.

Q What do you do?

A I am a maid, cleaning rooms in a hotel.

Q How long have you been so employed?

A Three and a half years.

Q Can you tell us what your purpose was in going to Colombia?

A To take my kids on a vacation over there and also to see my family.

Q I take it you are a native born citizen of Colombia, is that correct?

A Well, I don't know exactly what you mean.

Q Were you born in Colombia?

A Yes.

Q Are you still a citizen of that country?

A Yes.

Q And I think you said on your direct testimony that you are an alien resident of this country, is that right?

A Yes.

Q Do you have a telephone --

MR. KIMELMAN: Strike that.

Q Do you live in a house in Valley Stream?

A Yes.

Q Do you own the house with your family?

A Owner?

Q Do you own the house or do you rent it?

A No, I rent that house.

Q And do you have a telephone in that house?

A No.

Q You say that when you were in Medellia you met this gentleman William Valeacia, is that right, Mrs. de Garces?

A Yes.

Q Approximately when did -- when is the first time that you met Mr. Valeacia?

A Approximately about ten days after I arrived from my vacation.

Q What were the circumstances under which you met Mr. Valeacia?

A He has an office where money is exchanged.

Q Do you remember what street his office is on?

A No, I don't remember the name of the street.

Q Is it possible that the name and the number of the street was Carrea 50?

A Carrea? That word doesn't exist.

Q Perhaps it is my Spanish pronunciation.

A It would be Correra.

THE COURT: Let the interpreter see it.

(Mr. Kimelman hands document to interpreter.)

THE WITNESS: Well, I don't remember the number of the street.

Q And did Mr. Valeacia work for somebody?

A Well, he had an office there with several people.

Q And did he work for somebody named Jose Alonzo Franco?

A No, I don't know him. I don't know who worked for him.

Q Mr. Valeacia, he was a money changer, is that correct?

A Well, the office I used to go to and he used to exchange Colombian pesos for American dollars.

Q And is that why you went to him?

A Yes.

Q How many times did you go to Mr. Valeacia?

A Well, approximately three or four times.

Q Now, on which occasion did the discussion of the beds come up?

A The third time that I went.

Q And did he initiate the conversation?

A Yes.

Q Will you tell us again exactly what he said to you?

A He asked me whether it would be all right with me whether I had any convenience to receive these beds and that they were to be used for samples.

Q And did he describe the beds for you that were supposed to be sent?

A No.

Q Did he tell you how many beds?

A Yes.

Q How many beds did he tell you?

A Five.

Q Did he tell you how big they were?

A No.

Q He told you that they were to be used for samples, is that right?

A Yes.

Q And did he tell you that he was in the furniture business? Just yes or no.

A No.

(Continued on next page)

Q Did he tell you why he was shipping the beds?

A That those beds were to be sent up here for a friend as samples.

Q But did he tell you why he was sending the beds? He wasn't in the furniture business, was he?

A No; he gave me no reason for this.

Q And he told you that when you got to New York somebody would contact you about the beds?

A Yes.

Q How was this person going to contact you?

A He was to make -- he was going to make a telephone call to the telephone of a niece of mine.

Q What is your niece's name?

A Nora Calia. I do not know how to spell that.

Q Where does your niece live?

A In Lamana Avenue.

Q Lamont Avenue?

A Yes, in Queens.

Q In fact, does this niece of your live at 2901 Lamont Avenue?

A Yes.

Q That's in fact the place where you arrested; is that right?

A Yes.

Q What apartment did she live in?

A 3H.

Q Does she still live there?

A I don't know. Because I had no way of talking to her since.

Q She lived there on September 11, 1974?

A Yes.

Q Is the phone listed in her name?

A Well, I do not know.

Q What is the phone number?

A I do not remember.

Q When you gave it to Mr. Valencia, when you were in Columbia, how did you give him the number?

A I had it written down on a piece of paper.

Q Where is that piece of paper?

A Well, I have that piece of paper with me. I was not interested in it so I left it there.

Q Did you always carry a piece of paper with your niece's number on it?

A Yes. I had in Columbia.

Q Did you have your niece's telephone number anywhere at home now?

A No. It cannot be. I am not in my house now.

Q Where is it? Do you have it written down

anyplace in your home?

A Well, maybe so. Maybe the children will know about it.

Q But do you know if it's written down? Do you have an address book with telephone numbers?

A Yes, of course.

Q Is that number written in there?

A I do not recall it because I have several addresses and phone numbers there.

Q Perhaps I can help you, Mrs. De Garces. Is the telephone number that we are talking about 476-9773?

A Can you repeat the phone number again?

Q Of course. 476-9773.

A Well, I am not too certain.

Q Does your husband know the telephone number of your niece?

A I do not know.

Q In any event, that's the number you gave Mr. Valencia?

A Yes.

Q And how would your niece contact you when somebody would call you at that number?

A Well, when this guy Jorge called for the first time, he said that he would call the following day.

Q How did your niece tell you that this fellow Jorge called?

A I would go to see my niece often because I was receiving medical treatment at a place nearby my niece. Near my niece's place.

Q How would you get there, do you have a car?

A My niece has a car which she would loan to me.

Q Do you have a drivers license?

A Yes.

Q Is that a New York State Drivers License?

A Yes.

Q Now, after Mr. Valencia told you about these beds and you agreed to accept them, what were you going to get out of this?

A $100.

Q In other words, for your arranging to have these beds shipped to you, you were going to get paid $100?

A Yes. Upon receipt of the beds I would be paid $100.

Q And, in other words, this man Jorge was going to give you $100; is that right?

A Yes.

Q And Mr. Valencia didn't give you any money at

the time?

A No. Jorge was the one who gave me some money here for my expenses.

Q But you got nothing from Mr. Valencia?

A No.

Q So you did this all just on the promise that you would get $100? Is that right?

A Yes.

Q And Mr. Valencia told you -- strike that.

What was the reason Mr. Valencia gave you why you were the one who had to receive these beds?

A Well, he asked me whether it would be alright with me to receive these beds because I was -- since I was a resident of this country.

Q Did he tell you that this fellow named Jorge Rodriguez was not a resident of this country?

A William Valencia?

Q No. Did William Valencia tell you that Jorge Rodriguez was not a resident of the United States?

A Yes. He told me he was not a resident. That's the reason for his being in this country was to take care -- to receive those samples.

Q Was Mr. Jorge Rodriquez supposedly in the furniture business?

A No. I do not know.

Q Do you know what Mr. Jorge Rodriquez was to do with the beds?

A No. I know nothing about that.

Q Did you feel that there might have been something illegal in you taking in these beds instead of Mr. Jorge Rodriguez?

A No.

Q In other words, you just accepted Mr. Valencia's explanation that Mr. Rodriguez wasn't a resident, so, therefore, would you do this for $100?

A No. Because he asked me for that favor to -- just to receive those beds, to pick them up and receive them.

Q Now, Mrs. De Garces, I show you what has been marked as Government's Exhibit 17 in evidence. I would like you to look at it and tell me if you have ever seen it before.

A Yes.

That was the paper that Mr. Rodriguez gave me to take it to the agency.

Q And does your name appear on that paper?

A Yes.

Q Does it indicate on that paper that you purchased five beds?

A Well, it is not -- it does not say there that I bought them.

Q What does it say on it?

A It says -- it states the value of the five beds of Louis XV style, the values are 10 thousand pesos. The unit value of each bed is 2000 pesos. 2000 pesos, each bed. And the -- and the -- and -- I do not understand what -- 2000 dollars a piece, right. It is pesos, not dollars.

And those -- this figure is equivalent to 500 dollars.

Q Now, it's got the name of what appears to be a store on the top there; is that correct?

A Well, it seems that way. But I do not know whether it is a store.

Q Have you ever been in that store?

A No.

Q And you didn't buy five beds?

A No.

Q Did you tell Mr. Valencia to buy five beds in your name?

A No. He said to me that he was going to ship them under my name so I could receive them over here.

Q Now, Mrs. De Garces, I ask you to look at

Government's Exihibit 1 in evidence and I ask you if you recognize that.

A That paper?

Q Yes.

A No.

Q Have you ever seen that paper before?

A No.

Q And you didn't give that paper to the travel agency?

A That paper? The only one that I gave was the one that I was shown before.

Q In other words, the only thing you gave the travel agency was this piece of paper, Government's Exhibit 17?

A Yes, that one.

Q And you never gave them Government's Exhibit 1, this airway bill?

A No. The one that I handed was that paper.

Q Now, Mrs. De Garces, you were here and you hear Mr. Brea --

THE COURT: No good. You can't ask that question. Can't ask what she heard somebody else --

MR. KIMELMAN: Mr. Brea testified here.

THE COURT: I know, so what?

Q You don't know how this paper could have gotten in the hands of the travel agency; is that right?

A No.

Q Now, you gave the travel agency a piece of paper, this piece of paper, Government's Exhibit 17, right?

A Yes, that piece of paper; yes.

Q And you also gave them 300 dollars, is that right?

A Yes.

Q And that 300 dollars you got from Jorge Rodriguez; is that right?

A Yes.

Q Now, when is the first time that you learned that the beds had arrived?

A The 4th or the 5th. I do not recall the exact date.

Q And how did you find out that the beds arrived?

A Mr. Jorge -- this man called my nieces phone, the phone that he had. He telephoned my niece and left a message.

And he said that he was calling the following day at approximately -- more or less at 2:00 p.m. the following day. And I wanted for his call so that I could

pick up that paper.

Q So you waited at your niece's house; is that right?

A Yes.

Q And this is at 9201 Lamont?

A Yes.

Q And, I take it, that Mr. Rodriquez called back again; is that right?

A Yes. Yes. After I went out of the hospital, he called again.

Q And what is the exact date that you talked to Mr. Rodriguez yourself?

A Well, the exact date -- well, I remember the day I left the hospital. It must have been the 11th day when he called me to ask what was going on with the beds. And that was when I told him that they went tothe airport to pick them up.

Q That is not what I am asking you, Mrs. De Garces.

I am talking about when you arranged with him to pick up the 300 dollars and the documents that you eventually took to the travel agency.

A What do you want to know about that?

Q When was that? When did that conversation take place?

A When did it take place? The 4th of the 5th.

Q And did you set up a meeting with Mr. Rodriguez someplace?

A Oh, yes. Yes. I met him at 90th Street and he gave me the paper.

Q You met him at 90th Street and Roosevelt Avenue; is that right?

A Yes.

Q Now, why wasn't the meeting at 9201 Lamont? Why -- why did you go to Roosevelt Avenue?

A Because he told me that very nearby was the agency where I had to take that piece of paper.

(Cont'd on next page.)

BY MR. KIMELMAN:

Q And, I take it, you had a meeting with him at 90th Street and Roosevelt; is that right?

A Yes. I was to receive that paper.

Q And where did you meet? On the street?

A No. At a coffee shop.

Q And do you remember the name of that coffee shop?

A No. Because that happened in a very few minutes.

Q What did Mr. Rodriguez look like?

A He's a very short fellow, white. His hair is curly.

Q How old is he? About?

A For me, it's very hard to tell.

Q Is he about my age or is he about Judge Costantino's age?

A No.

THE COURT: You mean I am younger than he is, right?

THE WITNESS: Younger than you are.

THE COURT: That's what I said.

Q So he is younger than I am?

A Yes. A little bit. And he's shorter.

Q And shorter than I am?

A Yes.

Q He's not a teenager, though?

A No.

Q Now, to help you, I am twenty-eight. Is he still younger than I am?

A He must be around twenty-five, twenty-six years old.

Q Did he have any hair -- was he clean-shaven or did he have a mustache or beard?

A No. He was clean-shaven, but I cannot tell you whether he had a mustache or not. He wore glasses.

Q How was he dressed on that day? Was he in a suit or sport clothes?

A I believe he had a sport jacket on.

Q Did you see how he got to that address that day? Do you know if he drove a car there?

A No. He walked. I saw him walking.

Q And how did he know -- strike that.

How did you know each other when you first came into the coffee shop?

A He described himself to me, how his appearance was.

Q Now, after you met Mr. Rodriguez, did he ever give you any kind of business card of his?

A He just gave me the paper.

Q Did he tell you that he was in the furniture business?

A He told me that he needed those beds for a sample, to use them as a sample.

Q Did he ever tell you where he worked?

A No.

Q Did he tell you where he lived?

A No.

Q Did he give you any way of getting in touch with him?

A Well, in the envelope where that paper was, he only told me to take that envelope with that piece of paper inside and go to the agency and leave it there.

Q Did he ever tell you how you can get in touch with him?

A No. He said to me that he would call me. Because in the travel agency was told that they were to pick up the beds the following day.

Q Now, were you working at the time?

A No. Because I was sick.

Q Now, Mrs. DeGarces, do you know where 51-55 Van Kleen Street is in Queens?

A No, I do not know that address.

Q Do you know any reason why this airway bill,

Government Exhibit 1, would have the merchandise consigned to you at that address?

A No, I do not know.

Q Did you ever tell the travel agency that that is where the goods were supposed to be delivered to?

A Yes.

Q You told the travel agency that the goods were supposed to go to 51-55 Van Kleen?

A Well, I told them that they had to go to the address that was written on the envelope.

Q Was that the address that was written on the envelope?

A I do not remember because I handed it in.

Q But you remember the name Van Kleen?

A No, I do not remember it. I never lived in Queens so I don't recall Queens addresses.

Q Now, when you met with Mr. Rodriguez in the coffee shop, he handed you the three hundred dollars?

A Yes. And he took me -- we walked together for two blocks. And he told me where the agency was and he gave me the three hundred dollars.

Q And how did he give you -- what kind of bills? Large bills, small bills?

A I believe that they were fifties and -- fifties

and twenties. I do not recall anything else.

Q Did he give you the hundred dollars that you were supposed to get?

A No.

Q Did you ask him for it?

A No. Because he had told me previously that he would give me the hundred dollars upon receipt of the beds.

Q Now --

MR. KIMELMAN: Your Honor, I am sorry.

THE COURT: We are going to take a recess now. We will take a few minutes recess.

(Whereupon, the jury retired from the courtroom.)

(Recess taken.)

(continued on next page)

(The following occurred at 3:50 p.m.)

(The jury returned to the courtroom.)

THE COURT: All right, come up.

A M P A R O P E L A E Z D E G A R C E S , called as a witness, having previously been duly sworn, resumed and testified further as follows:

THE COURT: All right.

CROSS-EXAMINATION

BY MR. KIMELMAN (Continued):

Q Mrs. De Garces, did Mr. Rodriguez accompany you to the travel agency?

A No, he indicated to me where the place was and then he left.

Q Did you make any arrangements with him to talk again?

A He was supposed to call me up later to find out what happened at the agency.

Q Did he ever give you a reason why he didn't give you a telephone number?

A No, he only said to me that he was living in an apartment with a girl friend.

Q Did he tell you where?

A No.

Q Did he tell you why he wanted the beds delivered in Queens?

A No.

Q Now, how far is 9201 Lamont Avenue to where you live in Valley Stream?

A What distance?

Q How long would it take you to get there by car?

A Twenty minutes more or less.

Q How do you get to 9201 Lamont Avenue? How would you go there?

A Well, I was in the hospital at the time and the hospital is in Queens. The name of the hospital is St. John's.

Q Well, before you went into the hospital, how would you go visit your neice?

A She loaned me a car that she had.

Q And did you keep this car in Valley Stream all the time?

A Oh, yes, because she didn't need the car.

Q When you were arrested, Mrs. DeGarces, did you have a license on you, a driver's license?

A I wasn't driving the car.

Q How did you get over to 9201 Lamont on the day you were arrested?

A The previous day I had gotten there in a taxi from the hospital.

Q And did you sleep over on the night of the 10th?

A Yes, because I was in a very weak condition.

Q Well, why did you go into the hospital?

A I was hemorrhaging. I had a hemorrhage in my belly.

Q And were you very sick?

A Yes.

Q And when in fact did you quit work?

A Before leaving on my vacation.

Q So you hadn't worked since June of 1974, is that right?

A Yes.

Q And that is because you were sick?

A Yes, when I returned from my vacation I was already sick.

Q Were you very sick on the 4th or 5th of September when you met Mr. Rodriguez?

A Yes, I was sick but I still had not seen the doctor.

Q Did you have some difficulty getting around?

A No, not really.

Q Were you in any degree of pain?

A As I said before, I had a hemorrhage. I also had pain.

Q And the pain got so bad that on the 7th you went

into the hospital? Is that right?

A Well, it wasn't so much the pain as the hemorrhage.

Q And you are in the hospital three days, is that right?

A I went in on Saturday and I left the hospital on Tuesday, the following Tuesday.

Q And as soon as you got out of the hospital you called up the agency to find out about the beds, is that right?

A Yes.

Q And you felt very weak at the time, is that right?

A Yes, I was in bed.

Q You slept over the night of the 10th at your niece's house, is that right?

A Yes.

Q And does your niece work during the day?

A Yes.

Q And is there anybody else at home in the apartment?

A Yes, her mother, but at that moment she wasn't home; she was out shopping.

Q And did you have a key to the apartment?

A No.

Q Now, when the beds arrived on the 11th, you were standing outside in the street, is that right?

A Yes.

Q And how were you going to get back into the apartment?

A Well, the apartment has some sort of a code so that it cannot be locked.

Q So you left the apartment unlocked when you went downstairs?

A Yes. It was open a little bit and it was adjusted.

Q How long were you waiting downstairs for the beds?

A Approximately ten minutes.

Q Now, when you went to the travel agency to arrange for the beds to be picked up, who did you deal with there, a lady or a gentlemen?

A It was Mr. Salgado.

Q That is Mr. Richard Salgado?

A Well, I only knew him by his last name.

Q And you gave Mr. Salgado the $300, is that right?

A Yes. And also I gave him the receipt.

Q And did you tell him where the merchandise was?

A Whether I told him where the merchandise was?

Q Well, how did Mr. Salgado know where to pick the merchandise up from?

It doesn't say on this piece of paper where this merchandise is (indicating)?

A I don't remember how it happened at this very moment.

Q Did you tell Mr. Salgado that the merchandise was at the airport?

A Oh, yes, yes.

Q Did you tell him what airline?

A Air France.

Q And how did you know that?

A Because Mr. Jorge had told me.

Q Did he write that down on a piece of paper also?

A Mr. Jorge?

Q Yes.

A No, he didn't write that down.

Q You just remember that it was at Air France?

A Yes, but I don't remember now how it happened.

Q And do you remember if you had a shipping number for the merchandise so that when the travel agency went to the airport they could identify the merchandise?

A The number? I don't remember. The only thing

that I did is I hand them the money and I gained the receipt.

Q Well, Mrs. DeGarces, how would people at Air France know what the merchandise was from this piece of paper, Government's Exhibit 17?

A Well, I don't remember exactly. I don't remember exactly, but there was something else in the envelope.

Q Now, did you get a call the next day from the travel agency, Mrs. DeGarces?

A Oh, yes.

Q And did you go down to the travel agency on Saturday?

A Yes. I went there and I told them that I wanted to go to the airport to pick up that merchandise because later on in the day I was supposed to go to the hospital.

Q Mr. Brea told you that he wasn't able to pick up the merchandise, is that right?

A Mister whom?

Q Mr. Brea.

A Brea? Who is Brea?

Q A gentleman who was on the witness stand.

A Oh, he said that he couldn't go that Saturday afternoon to pick up the merchandise because it was a Saturday and was supposed to go the following Monday.

Q Didn't he tell you youwould have to go yourself?

A They told me I had to sign a receipt so that they could go there and claim the merchandise.

Q Didn't he tell you that they would need a letter of authorization from you so that they could pick it up in your name?

A Yes.

Q And do you know if they prepared such a letter? Just yes or no.

A Yes.

Q And did you sign such a letter?

A Yes.

Q And didn't Mr. Salgado translate that letter for you?

A No.

Q In other words, you just signed a piece of paper without knowing what you signed?

A Well, Mr. Salgado told me that it was a letter needed for him to go over there to pick up the merchandise.

Q Did you look at the letter before you signed it?

A Yes. I looked at the letter but I don't know how to read or write English.

Q I ask you to look at Government's Exhibit 18 for Identification. Is that the letter that you signed?

A Yes, that is my signature.

Q And that is the same letter, is that right?

(Witness examines document.)

A Well, what they asked me, I have my passport number and the number of my residence.

Q Did you give them the passport and the number of your residence?

A Yes.

Q And what is the residence that you gave them?

A What do you mean, the residence.

Q Tell the Court and jury what was the address that you gave them as your residence?

A The number that I gave them was the number of my alien card.

Q You gave them an address?

A No, the address, they already had it.

Q They already had your address?

A Not my address, the address where they were supposed to go to pick the merchandise up.

Q To pick the merchandise up or to deliver the merchandise?

A For them to go.

(Continued on next page.)

A For them to go.

THE COURT: Don't you think you have been over this a number of times?

MR. KIMELMAN: Your Honor, if I may respectfully --

THE COURT: I don't know how many times you are going to ask her about it, how many times she went to the place or how many times she was going to pick it up. It still has nothing to do with whether she knew whether there was in it cocaine or not. And that is what we are trying.

MR. KIMELMAN: I believe it does.

THE COURT: You can believe it, but I can tell you I haven't heard one word yet.

MR. KIMELMAN: If the Court will indulge me a little longer.

THE COURT: I am indulging, but I am not going to allow it much longer because you go on and on and on and it doesn't make any difference whether she saw the paper or didn't see the papers. That is not the issue. The issue is whether or not she knew there was cocaine contained in this bed at the airport and nothing else on this case.

MR. KIMELMAN: What the defendant does or doesn't

do the jury is able to decide from her actions in the case.

THE COURT: You can ask the question five million times. It doesn't make it any stronger or weaker. You still have to have some factual basis for it. There comes a time when the cross-examination has no value. And this may be the time. All right.

BY MR. KIMELMAN:

Q Mrs. DeGarces, do you have any idea why the travel agency would put Van Kleen Street on that piece of paper?

A No, I have no idea.

Q Now, did the travel agency tell you how much it was going to cost to pick up the beds?

A Well, they told me that it was -- that it was better for me to leave a deposit of three hundred dollars so that they could use that money for the expenses they would incur to go to the airport and pay the taxes.

Q That is just what you happened to have on you, is that correct?

A Mr. Rodriguez had given me the money ten minutes before so that I could give them the money.

Q So it was a coincidence that they wanted three hundred dollars and you just happened to have three hundred

dollars?

A Mr. Rodriguez had told me that he was going to give the three hundred dollars, which he did. In the agency they asked me for a deposit. In the agency they didn't know exactly how much it was going to cost for the taxes. They asked me how much money can I leave here. And I deposited -- I gave them the three hundred dollars.

Q How many times did you call the travel agency and go down there and check on the beds?

A Well, approximately three times.

Q Did you ever send anybody else down?

A Approximately three times before they called me up finally and told me that they were going to go to the airport to pick them up.

Q Did you ever send anybody else down to the travel agency?

A Yes.

Q Who did you send down to the travel agency?

A I sent Maria Quinones when I was in the hsopital so she could take a letter from the doctor to the agency, so they would know that I was sick in the hospital

Q Now, Mrs. DeGarces, did you have a conversation with Mr. Salgado and Mr. Brea about getting a letter from a furniture store?

A Well, they told me that in that piece of paper they told me that the merchandise was just a sample. That they were the ones that would get that letter. I did not know about any furniture store or anything connected with that in Queens.

Q Did you tell them that you would give them money if they would get a letter from a furniture store in Queens indicating that this furniture was to be used as samples?

A No. They never told me anything concerning that. They told me that they would take care of everything.

Q You didn't know anything about a letter to show that this merchandise was to be sent to another furniture store?

A No, I know nothing about that.

(continued on next page)

Q Did you tell Mr. Brea or Mr. Sacato if they needed more than $300 there would be no problem?

A Yes. Because Mr. Jorge had said to me that.

Q Mr. Jorge told you to tell them that additional money was no problem?

A Well, what Jorge told me was that he said they would take less than $300.

Q How many times did you talk to Mr. Jorge?

A Personally?

Q Personally.

A Personally I talked to him once.

Q How many times did you talk to him on the telephone?

A Well, several times. Because when he found out that I had -- that I had returned from the hospital, he called me several times so I could get in contact with the agency.

Q Now, Mrs. De Garces, weren't you actually going to be paid $2,000?

MR. BEZOZO: Objection.

THE COURT: Sustained.

MR. KIMELMAN: On what grounds, your Honor.

THE COURT: Just sustained.

If you don't know the grounds, that your fault. Sustained.

Q How many times did he call you, Mr. Jorge, on the 11th of September?

A Approximately three times.

Q And did he make arrangements with you to pick up the furniture?

A I told him that they had already left the agency and gone to the airport to pick it up; that they were going with the beds to his address. Then he asked me whether I had any inconvenience, whether it was all right with me to deliver those beds to a place near where I live. And he said that about an hour later he would go over and pick them up.

I said to him that since I was sick and I wanted to get this over as soon -- get it over with, they could be left at the parking lot in that address.

Q Was he supposed to pick them up in the parking lot?

A He said to me that an hour later he could. He would go there and pick them up.

Q How was he going to pick them up, did he have a car?

A Well, I don't know anything about that.

Q He didn't tell you how he was going to pick them?

A No. Absolutely not.

Q Did he tell you just leave them in the parking lot?

A Yes. Because I told him that I would not be responsible for it.

Q And he said that was okay with him?

A Yes, he said it was alright.

Q Now, was he supposed to pay you the hundred dollars when he got there?

A Yes. He already told me that. He had already told me that when he picked -- or when the beds were to be picked up he would give me the hundred dollars.

But he never said to me any specific time.

Q Mrs. De Garces, did Mr. Rodriguez ever come to pick up the beds?

A When I was arrested I told the agents that arrested me to wait for the man who is supposed to pick up those beds. I told him this on several occasions because those beds didn't belong to me. I never knew what was inside. My arrest lasted for approximately 15 minutes.

Q While you were sitting at 9201 Lamont, did you see Mr. Rodriguez come on the scene?

A No, because I was taken to the basement.

Q Do you know if Mr. Rodriguez ever called your

niece since the time you have been arrested?

A No. He never called again.

Q Did you ever make any effort or through your lawyer to contact Mr. Valencia?

A Well, I explained to my lawyer that he an office. And I also cooperated with the agents that arrested me so that they could go and track him down.

Q. Did you ever have your family in Medellin try to contact Mr. Valencia?

A No.

Q Now, when the agents delivered the bed, the agent, Mr. Brea, did you give them $20?

THE COURT: There is only one agent, and the other fellow --

MR. KIMELMAN: I said the agent, Mr. Brea.

THE COURT: Didn't give $20. $10 a piece. That's a little different.

MR. KIMELMAN: I am sorry.

Q Did you give Mr. Brea $10 and the other agent $10?

A I gave $10 to the guy who arrested me. And I do not -- I do not recall whether I gave $10 to the other man as a tip.

Q And whose money was that?

A It was mine.

MR. KIMELMAN: I beg the Court's indulgence for one moment.

(Pause.)

MR. KIMELMAN: I have no further questions.

THE COURT: Any other questions?

MR. BEZOZO: No.

THE COURT: All right, you may step down.

(Witness excuse.)

MR. BEZOZO: I have one other witness.

THE COURT: I can't take it because at 4:30 I have a conference. It will have to go over to tomorrow morning.

All right, be here at 10:30 in the morning. We will finish the case in the morning. Goodnight.

Don't discuss the case. Keep an open mind.

(Whereupon, the jury retired from the court-room.)

(Whereupon, an adjournment was taken to Tuesday, November 19, 1974 at 10:30 a.m.)

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-against- : 74-CR-579

AMPARO PELAEZ DE GARCES, :

Defendant. :

----------x

United States Courthouse
Brooklyn, New York

November 19, 1974

B e f o r e :

HONORABLE MARK A. COSTANTINO, U.S.D.J.

DANIEL D. SIMON
OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: STEVEN KIMELMAN, ESQ.
-and-
RICHARD BREWSTER, ESQ.
Assistant U.S. Attorney

STEVEN BEZOZO, ESQ.
Attorney for Defendant

(The following occurred at 10:45 o'clock A.M.)

THE COURT: Case on trial.

(The jury thereupon returned to the courtroom.)

MR. BEZOZO: My witness is not here yet. I imagine they should be here any second.

THE COURT: Good morning. I was under the impression that the defendants' witnesses had arrived. I understand that the witness has not arrived at this point. So I will have to send you back inside. It will be a few minutes only.

(Short recess.)

(After recess.)

(The following occurred at 11:37 o'clock A.M.)

THE COURT: All right, bring in the jury.

(The jury thereupon returned to the courtroom.)

THE COURT: All right, we are ready to start now.

M A R I A E U G E N I A Q U I N O N E S , called as a witness, having been first duly sworn (through the Interpreter) took the stand and testified as follows:

THE CLERK: State your name, please.

THE WITNESS: Maria Eugenia Quinones.

DIRECT EXAMINATION A 315

BY MR. BEZOZO:

Q Miss Quinones, what is your address?

A 44 Railroad Avenue, Valley Stream.

Q And what is your occupation?

A I am a maid at the Diplomat Motel Inn.

Q And do you know the defendant?

A Yes.

Q In June of this past year, of this year, did you accompany the defendant on a trip to Medellin, Colombia?

A Yes.

Q And in Colombia, did you have on one occasion with the defendant a meeting with Mr. William Valencia?

A Yes.

Q What occurred at this meeting with William Valencia?

A He asked Mrs De Garces to receive some beds over here, and when the beds would get here she was supposed to go and get those beds. And those beds were supposed to be delivered here to Jorge Rodriguez. And Mr. Jorge Rodriguez could not claim the beds because he had a tourist visa.

Q And who told you that Jorge Rodriguez had a tourist visa in the United States?

A Mr. William Valencia told me.

MR. BEZOZO: No further questions.

THE COURT: Any questions?

MR. KIMELMAN: Yes, sir.

CROSS-EXAMINATION

BY MR. KIMELMAN:

Q Mrs. Quinones, how long did you know the defendant Amparo Pelaez de Garces?

A Approximately twenty-six years.

Q And you are a friend of hers?

A I am part of her family.

Q Are you related to her?

A What do you mean?

Q Are you related by blood or marriage?

A I am her niece.

Q Do you know if she has another niece living at 9201 Lamont St.?

A Yes.

Q What is the name of that niece?

A Nora Calle.

Q Is that C-a-l-l-e?

A Yes.

Q And you live at 44 Railroad Avenue; is that right?

A Yes.

Q And that is where the defendant lives; is that

right?

A Yes.

Q Do you live together in the same place? Is it a one-family house or is it an apartment building?

A It is a house.

Q Do you pay rent there?

A Yes.

Q Do you pay rent to the defendant?

A No.

Q You said you worked as a maid at the Diplomat Motel; is that right?

A Yes.

Q Did you work there with the defendant?

A Yes.

Q And she quit her job in June of this year?

A Yes.

Q Was that because she wasn't feeling well?

A And she also wanted to take her kids to Colombia on a vacation.

Q You of course know Mrs. De Garces' husband, don't you?

A Yes.

Q What does he do for a living?

A He is a car salesman, a dealer.

Q Mrs. Quinones, how much does it cost to fly to Colombia?

A Approximately for the plane ticket $450.

Q That is the round trip?

A Yes.

Q Now, when you went to Colombia this summer with the defendant did you stay with her?

A Yes.

Q And does the defendant have a family living in Medellin?

A Yes, she has.

Q And do you know if the defendant has been to Medellin before?

A Yes.

Q Do you know how many times?

A Well, she has lived most of her life in Medellin. And later on she came to the United States.

Q And you went with her to see Mr. Valencia this one time?

A Yes.

Q Where did you go?

A We went to exchange some dollars.

Q And what was the street; do you remember?

A No.

Q Well, Mrs. De Garces has lived there her whole life, has she not?

A Yes.

Q She would know the street, would shenot?

A I don't know whether or not she remembers it. I know how to get there.

Q You remember what kind of an office it was?

A Yes.

Q What kind of office is it?

A It is an office that is located on the second floor. It is a small office. It has four or five desks. There is a secretary there and two other people helping him out.

Q Do you know whether Mr. Valencia works for someone named Jose Alonzo Franco?

A No.

THE COURT: That is, she doesn't know.

Q You don't know or you don't remember?

A No, I don't know whether he works for him or not.

Q You don't remember whether there was a sign on the door?

A The only sign that is on the door was one reading We exchange checks and dollars.

Q How much money did your friend exchange on that

occasion?

A $200.

Q $200?

A But I cannot tell you for certain.

Q Do you know if she had gone to exchange dollars before with Mr. Valencia?

A We went there to exchange dollars on three or four occasions.

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Q You went with her?

A Yes.

Q How much money did she exchange on these occasions?

A It could have been a thousand dollars.

Q One thousand dollars?

A Yes.

Q When this alleged conversation took place with Mr. Valenci, how was Mr. Valenci going to contact the defendant in the United States?

A Well, she gave him a telephone number where she could be located here as soon as the merchandise would get here.

Q Whose telephone number did she give him?

A I do not remember the telephone number.

Q Do you know the telephone number of Mrs. -- I believe -- Calle?

A No, I do not remember, but it is the same telephone number she gave in Colombia.

Q You recognize Mrs. Calle's telephone number?

A No.

Q When she gave him the number, how did she do it, tell him the number or did she have it written down someplace?

A She gave him the telephone number verbally.

Q Did she have it written down -- strike it. Did she read it from an address book she might have had?

A No, I don't remember that.

Q Did you ever meet Jorge Rodriguez?

A No, I do not know him.

Q Did you go down to the travel agency for Mrs. DeGarces on one occasion?

A Yes.

Q What was your purpose in going down to the travel agency?

A Mrs. DeGarces was in the hospital and the agency said perhaps she could or would produce a medical certificate saying she was ill and she would not have to go to the agency.

Q Did Mrs. DeGarces ask you to go down to the agency for her?

A Yes, to take the medical certificate.

Q Was Mrs. DeGarces very sick at the time?

A Yes, she was in the hospital.

Q Mrs. Quinones, you do not want to see Mrs. DeGarces go to jail, do you?

A No.

MR. KIMELMAN: I have no further questions.

THE COURT: All right, you may step down.

Is that the defendant's case?

MR. BEZOZO: That is the defendant's case, your Honor.

THE COURT: The jury may step out for a minute.

(The jury left the courtroom.)

THE COURT: Do both sides rest?

MR. KIMELMAN: Perhaps, your Honor, we will have rebuttal.

THE COURT: You are resting your prime case?

MR. KIMELMAN: Yes, your Honor.

THE COURT: You are resting your prime case?

MR. BEZOZO: Yes, sir.

THE COURT: Would you state your motion at this time?

MR. BEZOZO: I would like to make a motion for a dismissal, your Honor.

THE COURT: Give me something more specific. Do not say a motion for a dismissal, I am not the lawyer, I am the trial judge. I do not want to be accused of trying cases.

MR. BEZOZO: Your Honor, the Government has not proven that my client had knowledge of anything in the shipment. They have not shown at any time --

THE COURT: How about the possession part of it? How about the second count, wherein it says they are charging possession with intent to distribute?

MR. BEZOZO: She did not have the knowledge of the narcotics in there. She never had knowledge of the narcotics in there.

THE COURT: What have you to say about the possession count?

MR. KIMELMAN: Your Honor, what was done here is the standard procedure by the Drug Enforcement Administration and has been upheld many times.

THE COURT: I am not talking about possession on her part, knowledge, possession and control on her part, not on what the Drug Enforcement agency did. You have to show control by the defendant. If she had control she could have done whatever she wanted with it.

There was a difficult time getting the beds out of there and then going back to the hospital and going to the travel agency, going back with letters, signing english letters and spanish letters. She had no control.

MR. KIMELMAN: Your Honor, the defendant signed a receipt for the merchandise. The merchandise was delivered to her and she took constructive possession

of the merchandise. The receipt is in evidence as Government Exhibit 22.

THE COURT: As to Count Two in the indictment, the Court dismisses Count Two for failure of proof as a matter of law in that even as a matter of law it does not meet the requirements as far as possession is concerned in that the defendant possessed a quantity of cocaine-hydrochloride; that the defendant possessed the said cocaine with intent to distribute it; that she understood that the substance she possessed was cocaine or some other illegal drug and she understood she acted illegally. All these requirements have not been met essentially as a matter of law, let alone as a question of fact.

As to Count One, the Court denies the motion.

MR. KIMELMAN: If I may respectfully request the Court give some further exposition as to why as a matter of law --

THE COURT: Mr. Kimelman, I have been giving so much thought to this case, do not say that to me. I even put my reasons on the record. I have given it sufficient thought. That is the Court's ruling and you may take your exception.

MR. KIMELMAN: Very good, your Honor.

Your Honor, at this time the Government would

again renew its request to this Court that the letter in question that we have argued on two occasions prior is now admissible in evidence based on the defendant's testimony that there is in fact an individual, a known individual, as William Valenci and this letter is signed by a person named William Valenci who works in Medalia. There is in fact now an individual known as Jorge and in fact the letter mentions Jorge and -- but every other element in this letter is now a fact and further because the defendant claims she was to be paid a hundred dollars for delivering this furniture when in fact the letter says she is to be paid two thousand dollars.

In view of the defendant's statement on cross-examination the Government feels now that this letter may be introduced as proper rebuttal to the defendant's statements.

THE COURT: What have you to say?

MR. BEZOZO: Your Honor, this is a letter that was written from a third party not to the defendant, but to a third party who we do not know, who has never been brought out in this case.

THE COURT: I will still make the same ruling I have made previously. The letter is not admissible in evidence and is not an exception to the hearsay

rule in a co-conspiracy. I will make the same ruling.

Count One will be submitted to the jury.

Is there any further rebuttal?

MR. KIMELMAN: No, your Honor.

THE COURT: Count One will be submitted to the jury, that is, the importation alone.

How much time will you need to sum up to the jury? I would think fifteen minutes apiece would be sufficient.

MR. KIMELMAN: Fifteen to twenty minutes.

THE COURT: Take fifteen, that is better.

MR. BEZOZO: That will be sufficient.

THE COURT: Bring in the jury.

(The jury took its place in the jury box.)

THE COURT: The case is now completed and both sides rest. At this point we will have summations by attorneys, which is argument as to what has been proven or not proven in this case.

In any event, this is now a one count indictment. The Court has dismissed one count and that has nothing to do with the jury. It is a question of law before the Court and the Court has dismissed Count Two, the possession count, that is dismissed. Either way it should not influence your judgment in this case.

You must be able to distinguish between matters

of law as compared to matters of fact. You are the judges of the facts. Whatever came from the witness stand as facts, that is what you are to consider as finders of the fact. I will instruct you as to the law.

Now, we will go to summations. I will advise counsel when there time is up in their summations to the jury.

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MR. BEZOZO: Ladies and gentlemen of the jury, your Honor, Mr. Kimelman: The case in the last few days involves a 33-year-old defendant who is married and has two children. She was, prior to June 1974, employed for three and a half years in the Diplomat Rotary Rockville Centre, New York, and she has never been arrested prior to this case.

MR. KIMELMAN: Your Honor, there is no such testimony.

THE COURT: There is no testimony to that effect.

MR. BEZOZO: What has the Government proved? Merely the fact that the defendant was the consignee of a shipment of bed frames. Have they proved that she had knowledge of what was in that shipment? That is a fact for you to decide.

The defendant stated while she was on the witness stand that she took a trip to Colombia with her family. On the trip while she was in Medellia she was approached by a man to exchange her currency and more as a favor than anything else, he asked her to receive a shipment of bed frames in the United States for a friend of his. This is a common thing since the friend was afraid of his status in the

United States as a tourist, not being a resident of the United States.

MR. KIMELMAN: I am going to object to Mr. Bezozo testifying.

THE COURT: I understand that is what the defendant said from the witness stand. He is not testifying.

MR. BEZOZO: The defendant was doing a favor for this gentleman in the fact that he was afraid to pick up the goods at the airport. Upon her return to the United States in dealing through the travel agency and her meeting with this third party, Mr. Rodriguez, she never showed any knowledge of what actually was in the shipment. She was even forewarned by Mr. Brea, who worked for the travel agency, on the Saturday before her arrest, that the goods at the airport were going to be inspected carefully and even after that warning she did not show any fear about continuing with receiving the shipment of the bed frames. She never showed after that point any fear of continuing with the operation. She, in fact, proceeded quite diligently to receive the shipment. If she had known what was in the beds, I do not think she

would have continued at that point.

She certainly does not show any knowledge of the cocaine being in the bed frames. There is nothing in this case to show that the defendant had knowledge of cocaine in the bed frames.

The Government produced witnesses who stated that there was cocaine in the bed frames which were shipped from Colombia. The Government's witnesses merely proved that there was a shipment of bed frames into the United States and that my client was the consignee of that shipment. They proved no more than that.

THE COURT: Mr. Kimelman.

MR. KIMELMAN: May it please the Court, Mr. Bezozo, ladies and gentlemen of the jury: It has been a relatively short case. There have only been five, six or seven witnesses before you. As Mr. Bezozo just stated and the Court has stated several times during the course of this trial, there is really only one issue involved here. There is no question that these beds were imported from Colombia. There is an air waybill in evidence that shows that the beds and cocaine contained inside were imported. There is no question that

the United States Customs Service, acting on a tip, examined these beds and found approximately three pounds of this powder and there is no question, based on this stipulation, that the powder that they found inside those headboards was cocaine hydrochloride.

As Judge Costantino will instruct you, importation of cocaine hydrochloride is against the laws of this country. There is no question that this defendant was the consignee of this shipment. It is right here on the air freight bill.

There is no question that she knew she was getting a shipment of beds from Colombia. There is only one question and that is, did she know that there was going to be cocaine hidden inside those headboards. I suggest to you that as jurors and human beings, it is difficult to look into someone's bind and determine what they knew and what they are thinking. The only way to determine if this defendant knew what she was doing and knew there was going to be cocaine inside those headboards is to carefully examine all the circumstances involved in this case, carefully examine exactly what this defendant said, carefully examine exactly what this defendant did.

When you do this, use your God-given intelligence, use your God-given common sense and ask yourself what would I do in a situation like this, and put yourself in the place of the defendant and ask yourself the questions that I am going to present to you.

Let us look briefly at the testimony. There is no question that the defendant was in Colombia. We know she flew down there for the summer with her friend, Mrs. Quinones, and her two children and now we know that the roundtrip air fare for each person is approximately $450 and we know that she told us she went to this money changer three or four times, this Mr. Valeacia, and apparently this is all in her home town Medellia. We know that she changed approximately $1,000 worth of dollars into pesos in the course of her visit.

I asked her, if you recall, what the address was -- and this is inher home town -- and she did not remember and yet she was there three or four times and she did not even remember the street itwas on. Ask yourself about this inconvenient loss of memory and ask yourselves if it is not because that would allow someone to find out if Mr. Valeacea does exist and does do what the defendant claims he does and if

is a legitimate business man.

She agreed to have the furniture shipped in her name and she says that she did not buy the furniture herself.

I will ask you to examine Government's Exhibit 17 in evidence. You will recall I asked the defendant if this is a bill of purchase in her name and she said, well, there is no way of telling it is a bill of purchase. You take this into the jury room and ask yourselves if this is a bill of purchase showing that this defendant paid for these beds.

She knows that William Valeacea is not in the furniture business and she never finds out anything about this Rodriguez except she knows that in some way it is not possible for him to receive this furniture and she never wonders if there is something illegal going on here. Why does this man Rodriguez have to bring in five beds into the United States? Ask yourselves if the reason why she did not want to wonder and ask yourselves if you would have wondered and if the reason she did not wonder is because she already knew why Rodriguez was bringing five beds into the United States and why William Valencea was sending five beds into this country.

And she knew why Rodriguez with his tourist visa and Mrs. de Garces with her permanent residence was the best one to receive this furniture. She says that she did not have a phone in her house and she gave William Valencea the phone number of her niece and she had it written on a piece of paper that she kept with her and she gave that piece of paper and now she does not remember the phone number of her niece.

We just heard Mrs. Quinones' testimony that she just gave the number by memory, there was no piece of paper.

Ask yourselves why isn't this phone number available now and why there is this second loss of memory.

We know she got back to the United States and she was feeling sick. In fact she had been feeling sick before she left and she apparently was sicker when she came back. After she is back a few days her niece somehow gets in touch with her and tells her this fellow Jorge Rodriguez called and she spent the next day going over to her niece's house, on the 4th or 5th, and she waits until Rodriquez calls and she agrees to meet him in some coffee shop. She

goes to the coffee shop and meets with this fellow she has never met before and he just casually gives her $300 and she says all he gave her was this piece of paper and an envelope that had an address on it.

I asked her, did he give her this air waybill in her name, with her name on it, and she said no. Ask yourselves if one reason she cannot remember the air waybill is because the air waybill says Ampara De Garces, and the address 51-55 Van Kleen Street, Apartment 5-E, Elmhurst.

We know Frankie Gray testified he originally was supposed to deliver the furniture some place on Van Kleen Street. Ask yourselves why she tried to hide this. Ask yourselves maybe some arrangement had been made to deliver the furniture to somebody on Van Kleen Street.

She gets this $300 and she goes to the travel agency and does Jorge Rodriguez come into the travel agency? No, because then maybe somebody could see Mr. Rodriguez and identify him, somebody at the travel agency, but no, nobody has ever seen Jorge Rodriguez except the defendant.

/3 She goes into the travel agency and they say $300 for this and she conveniently happens to have

$300 with her and Mr. Brea tells you that the travel agency was also given this air waybill but the defendant says there was no air waybill. Ask yourselves why, again.

This is a Spanish-speaking travel agency. You observed the defendant on the witness stand. Ask yourselves, is this an unintelligent woman? Is this a woman who does not know? We have a Spanish-speaking travel agency and everything is understood, there is no problem explaining what has to be done, what has to be picked up. She tells them, according to Mr. Brea and according to her own testimony, "If you need more than $300, that is no problem." And yet the defendant does not know why she signed an authorization.

She finds a piece of paper that has her address and her alien number on it and she does not know whether she signed it.

Mr. Brea tells you about a conversation that he had with her about getting apparently a phony letter from a furniture store and this phony letter indicates that the furniture coming in was going to be eventually sent to another furniture store as samples.

Mr. Brea testified on page 185: "She said she didn't know nobody that has a furniture store and we could get a letter, 'yes, to get a letter to bring the furniture to make a letter like that the furniture would be going there and, that she would pay any fee that is supposed to be paid.'"

And then we have the question: "In other words, she was going to pay you to get it from a furniture store?

"Answer: Yes, like if we had to pay the furniture store anyway."

Ask yourselves why Mrs. De Garces for $100 would do this whole transaction. Why was she willing to allow this company to get a phony letter from a furniture store stating that this furniture store was going to eventually be the consignee of this furniture? The defendant denies this conversation.

THE COURT: Your time is up. I will give you two more minutes.

MR. KIMELMAN: The main question to ask yourselves is why is this defendant so sick that she has to go into a hospital. Why is she doing all this for the $100? This is a defendant who can afford to take off two months to go to Colombia with her

children, who can afford to pay the air fare and changes $1,000 into pesos during the course of her trip. This is the defendant, who as soon as she gets back from this hospital and is so weak she has to stay in bed, calls this travel agency to make sure the beds have arrived, who goes downstairs to accept the delivery of the beds, who calls the travel agency three or four times during the course of the week and who goes down there twice, one time on the 6th right before she has to go into the hospital. This is the defendant so concerned who is doing a favor for people she does not know and people she does not even know where they live or anything about them and she is doing this as a favor or, as she would have you believe, for $100.

I ask you if perhaps she is not going to be paid something more substantial and perhaps that she can't admit what she was actually going to be paid because it would raise a doubt inyour minds whether she knew something illegal was going on here, and ask yourselves what makes sense in this case and ask yourselves what any person would do in this type of situation.

Finally, when the furniture finally arrives

and the defendant gets up from her sick bed and goes downstairs out of the $100 that she is to receive for this, out of all this trouble that she is going through, despite her sickness, the many calls and trips to the travel agency, all this for an unknown Jorge Rodriguez, who somehow has completely disappeared from sight. And she tips the delivery men $20 out of the $100 that she is supposed to have received. I ask you if that makes sense.

Finally, I ask you what happened to William Valencea. I asked her if she had a family who could contact Mr. Valencea, the one person who could clear this up, a business man apparently in her home town. Why hasn't Mr. Valencea been called, why has he not, and ask yourselves if you were in the defendant's situation, would you have had your family or your lawyer try to contact Mr. Valencea so that he could explain and perhaps Mr. Valencea is not who the defendant says he is.

Ladies and gentlemen, I ask you to consider everything involved in this case, weigh the demeanor of the witnesses, ask yourselves what each witness's motive was in testifying. I am sure if you consider

all the facts, I am sure you will find the Government has proved its case beyond a reasonable doubt and justice will prevail in this trial.

Thank you very much.

THE COURT: We are going to have the charge to the jury.

(A sidebar was held without the hearing of the jury as follows:)

THE COURT: Both lawyers have reviewed my charge and I have taken out the possession part and nothing else.

I have your requests that you gave me.

Do you have any exceptions.

MR. KIMELMAN: The only exception I have is to request the standard charge of the Court if a defendant takes the stand.

THE COURT: I have that.

(End of sidebar.)

Mr. Foreman, ladies and gentlemen of the jury:

We now come to the final stage of the proceedings. The Court will now charge you on the law to be applied to the facts in the case.

As you may recall, I initially gave you a precharge as to the manner in which the case would be presented to you. I told you that most of the evidence in the case would come in the form of the testimony of witnesses, and that you were to pay special attention to the manner in which the witnesses testified.

I believe I also instructed you that you would be the judges of the facts in the case, that being your sole province; and that your recollection of the facts after having heard all of the evidence in the case -- the testimony of witnesses and the documentary proof -- was to control the determination of the issues.

Likewise at that time I told you that I would be the judge of the law. This has not changed at this stage of the proceedings. I will not review the facts in this case for you because I am certain that with summations by the attorneys there is no need for the Court to review the facts. In any event,

if you find that there is some fact in the case that you may have forgotten or don't recollect, or you can't agree with each other in your deliberations, you can have it read back from the record, and that will, I am sure, refresh your memory.

In any event, I am the judge of the law. You must accept what I say to be the law in this case.

Now, the attorneys have been permitted by the Court and by the rules to make opening statements and summations to you. Under no circumstances are the statements they have made by way of opening or by way of summation to be taken as evidence. However the Court and the law does permit you to take the arguments that they have proffered before you and weigh those arguments. And if you agree with what they have said on either side of the case you may use those arguments in your deliberations and in discussing the case with each other, and try to convince one another as to what the final determination shall be with reference to the deliberations at hand.

If you feel that the arguments are not commensurate with the testimony and the proof in the case, you may disregard them. The arguments are not evidence. You need not weigh them. However, there

are times when the arguments of the attorneys will give you an insight as to something you may have missed, and you may discuss that portion of it if you so desire.

Now, of course, I also said to you that during the trial the Court will be the judge of the law. Likewise, as to motions which at times we had at a side bar, as you may recall. That was not for the purpose of keeping any of the proof from you, but were matters of law that were discussed between the attorneys and the Court itself and should not have come before you. In any event, if you feel that you have discovered by some stretch of your imagination what this Court thinks as to either some of the testimony or the case itself, you should remove that from your mind because I tell you here and now I have come to no conclusion in this case nor have I indicated to you in any way whatsoever what my feeling is with reference to the facts in the case or with reference to the guilt or innocence of the defendant. That is your province and your job. You should not try to weigh what you believe the Court's impression may be.

You must understand that the lawyers who appear

before you are advocates. They are advocating the best case they can for the parties they represent and they have a right to exercise as much forcefulness as they desire in their questioning or otherwise in presenting their case. I say this because this is within the framework of the ordinary trial.

Of course you know by this time that this case has come before you by way of an indictment presented by a Grand Jury sitting in this Eastern District. That indictment charges the defendant with the counts I shall now read to you. Remember, the indictment is merely an accusation, merely a piece of paper. It is not evidence and is not proof of anything.

It is now a one-count indictment.

Count One: On or about the 4th day of September, 1974, at John F. Kennedy International Airport, within the Eastern District of New York, the defendant AMPARA PELAEZ DE GARCES did knowingly and intentionally import into the United States from places outside thereof, a quantity of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Sections 952(a) and 960(a)(1), Title 18, United States Code, Section 2).

I will read to you the sections of law that

apply to this count of the indictment.

21 U.S.C. Sec. 952(a) says in pertinent part: It shall be unlawful to import into the United States from any place outside thereof, any controlled substance.

21 U.S.C. Sec. 960(a)(1) states in pertinent part: Any person who contrary to section 952 knowingly or intentionally imports a controlled substance shall be guilty of a crime.

The indictment also charges the defendant with being an aider and abettor.

Section 2 of Title 18 of the United States Code reads as follows:

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

The essential elements of the first count of the indictment, all of which the Government must prove beyond a reasonable doubt or else you must

acquit the defendant on the first count, are as follows:

First, that the defendant imported a quantity of cocaine into the United States from abroad; and

Second, that the defendant knew that the substance she was importing into the United States was cocaine, or some other illicit drug; and

Third, that the defendant understood that she was acting illegally.

If the Government proves each of these three essential elements beyond a reasonable doubt, then you must find the defendant guilty on the first count. If the Government fails to prove any one or more of the three essential elements then you must acquit the defendant.

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"Importation" is defined as the act of bringing goods and merchandise into this country from a foreign country.

Count One of the indictment also charges the defendant with being an aider and abettor, in knowingly and intentionally importing cocaine-hydrochloride.

In order to aid and abet another to commit a crime it is necessary that an accused willfully associate himself in some way with the criminal venture, and willfully participate in it as he would in something he wishes to bring about; that is to say, that he willfully seeks by some act or omission of his to make the criminal venture succeed.

An act or omission is "willfully" done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

You, of course, may not find a defendant guilty unless you find beyond a reasonable doubt that every element of the offense as defined in these instructions was committed by some person or persons, and that the defendant participated in its commission.

The charges in this indictment require that the Government prove that the defendant knowingly or intentionally performed the acts in violation of law. The Court will therefore define the words knowingly and intentionally.

An act is done knowingly if done voluntarily and intentionally, and not because of mistake, or accident, or other innocent reason.

The purpose of adding the word knowingly was to insure that no one would be convicted for an act done because of mistake, accident, or other innocent reason.

It is obvious that as to the counts, a critical question is whether the defendant, Amparo Pelaez De Garces, knew she had cocaine. Actual knowledge that the defendant imported cocaine into the country is an essential element of the offenses charged.

You may not find the defendant guilty of this count unless you find beyond a reasonable doubt that she knew she imported cocaine. The fact of knowledge may be established by direct or circumstantial evidence just as any other fact in the case. Knowledge may be proven by the defendant's conduct since we have no way of looking into a person's mind directly.

The defendant has flatly testified that she had no such knowledge. Now, in this connection bear in mind that one may not willfully and intentionally remain ignorant of a fact, important and material to his or her conduct, in order to escape the consequences of the criminal law.

If you find from all the evidence beyond a reasonable doubt that the defendant believed that she had cocaine and deliberately and consciously tried to avoid learning that there was cocaine inside the headboard in order to be able to say, should she be apprehended, that she did not know, you may treat this deliberate avoidance of positive knowledge as the equivalent of knowledge.

In other words, you may find the defendant acted knowingly if you find that either she actually knew she had cocaine inside the headboard or that she deliberately closed her eyes to what she had every reason to believe was the fact. I should like to emphasize, ladies and gentlemen, the the requisite knowledge cannot be established by demonstrating merely negligence or even foolishness on the part of the defendant.

The term "distribute" means to deliver. The

term "deliver" means the actual, constructive, or attempted transfer of a controlled substance.

Now, there are in any case, and in this one, two types of evidence from which a jury may properly find a defendant guilty of a crime, one is direct evidence such as testimony of an eyewitness, the other is circumstantial evidence which is proof of a chain of facts and circumstances pointing to the commission of the offense.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that before convicting a defendant the jury must be satisfied of the defendant's guilt beyond a reasonable doubt from all the evidence in the case.

A defendant is presumed innocent of the crime. Thus the defendant, although accused, begins the trial with a clean slate and with no evidence against her, and the law permits nothing but legal evidence to be presented before a jury to be considered in support of any charge against the accused, so that the presumption of innocence alone is sufficient to acquit a defendant unless you, the jury, are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case.

It is not required that the Government prove guilt beyond all possible doubt. The test is one of reasonable doubt, and reasonable doubt is doubt based upon reason and common sense, the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that you would be willing to rely and act upon it unhesitatingly in the most important of your own affairs.

You, the jury, will remember that a defendant is never to be convicted on mere suspicion or conjecture. The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant. The law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

A reasonable doubt exists whenever, after careful and impartial consideration of all the evidence in the case, the jurors do not feel convinced to a moral certainty that a defendant is guilty of the charge. So, if the jury views the evidence in the case as reasonably permitting either of two conclusions, one of innocence, the other of guilt, you, the jury, should, of course, adopt the conclusion of

innocence.

I have said that the defendant may be proven guilty either by direct or circumstantial evidence. I have said that direct evidence is the testimony of one who asserts actual knowledge of a fact, such as an eyewitness. Also circumstantial evidence is proof of a chain of facts and circumstances indicating the guilt or innocence of a defendant. You, the jury, may make common sense inferences from the proven facts.

It is not necessary that all inferences drawn from the facts in evidence be consistent only with guilt and inconsistent with every reasonable hypothesis of innocence, or that there must be no reasonable doubt as to each chain of proof. The test is one of reasonable doubt, and should be based upon all the evidence, the testimony of the witnesses, the documents offered into evidence and the reasonable inferences which can be drawn from the proven facts.

An inference is a deduction or conclusion which reason and common sense lead the jury to draw from the facts which have been proved. You are to consider only the evidence in the case. But, in your consideration of the evidence, you are not limited to the bald statements of the witnesses. On the contrary, you are

permitted to draw, from the facts which you find have been proved, such reasonable inference as seem justified in the light of your own experience.

A reasonable doubt may arise not only from the evidence produced, but also from a lack of evidence. Since the burden is upon the prosecution to prove the accused guilty beyond a reasonable doubt of every essential element of the crime charged, a defendant has the right to rely upon failure of the prosecution to establish such proof.

When a defendant in a case of this kind takes the stand, which she has a perfect right to do, she is subjected to all the obligations of witnesses, and her testimony is to be treated like the testimony of any other witness; that is to say, it will be for you to say, remembering the substance of her testimony, the manner in which she gave it, her cross-examination, and everything else in the case, whether or not she told the truth. Then, again, it is for you to remember, you have a perfect right to do so, the very grave interest the defendant has in the case. As she places herself as a witness, she stands like any other witness.

Where a witness is a defendant on trial in the

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Where a witness is a defendant on trial in the

case and, by such statements or other conduct, the defendant admits some fact against her interest, then the statement or other conduct, if knowingly made or done, may be considered as evidence of the truth of the fact so admitted, as well as for the purpose of judging the credibility of the defendant as a witness.

An act or omission is "knowingly" done, if done voluntarily and intentionally, and not because of mistake, or accident, or other innocent reason.

You as jurors are the sole judges of the credibility of the witnesses and the weight their testimony deserves, and it goes without saying that you should scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief. Consider each witness' intelligence, motive and state of mind, and his or her demeanor and manner while on the stand. Consider the witness' ability to observe the matters as to which he or she has testified, and whether he or she impresses you as having an accurate recollection of these matters. Consider also any relation each witness may bear to either side of the case; the manner in which each witness might be affected by the

verdict; and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; and innocent misrecollection, like failure of recollection, is not an uncommon experience.

In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such credibility, if any, as you may think it deserves. Another test that you can use in determining the truthfulness or credibility of a witness is to use your own good common sense in addition to these essentials that I have given you. You can use your good common sense as you do in your everyday experience where you must make important decisions based upon what others tell you. When you decide to either accept or ignore the

statements of others you use your common sense. Your good judgment will say to you somehow or other that whatever they say does not appear to be truthful, that somehow or other you just do not believe what they have said. That is your ability to reason, your ability to determine the truthfulness of the person you are speaking with. Likewise, your common sense should be used to determine the weight to be given the testimony of a witness.

You take that same good common sense in to the jury room; you do not leave it outside. In addition to what I have said, use your common sense as a test in exercising your good judgment and in determining whether or not this defendant is guilty of the crimes charged. It is for you to determine whether the witnesses in this case have testified truthfully, whether or not they have an interest in the case, what the interest may be, and how great it is, and whether or not they have told you falsehoods. This is all for you to determine.

(continued on next page)

Every witness' testimony must be weighed as to its truthfulness. If you find any witness lied as to any material fact in the case, then the law gives you certain privileges. One of those privileges is that you have the right to disregard the entire testimony of that witness. If you find, however, that you can sift through that testimony and determine which of the testimony is true and which is false, then the law allows you to take the portions which were true and weigh it and disregard those portions which were false. That again is within your prerogative.

The weight of the evidence is not necessarily determined by the number of witnesses testifying on either side. You should consider all the facts and circumstances in evidence to determine which of the witnesses are worthy of greater credence. You may find that the testimony of a smaller number of witnesses on one side is more credible than the testimony of a greater number of witnesses on the other side.

You are not obliged to accept testimony, even though the testimony is uncontradicted and the witness is not impeached. You may decide, because of the witness' bearing and demeanor, or because of the

inherent improbability of his testimony, or for other reasons sufficient to you, that such testimony is not worthy of belief.

The Government is not required to prove the essential elements of the offense as defined in these instructions by any particular number of witnesses. The testimony of a single witness may be sufficient to convince you beyond a reasonable doubt of the existence of an essential element of the offense charged, if you believe beyond a reasonable doubt that the witness is telling the truth.

There is nothing peculiarly different in the way a jury should consider the evidence in a criminal case from that in which all reasonable persons treat any question depending upon evidence presented to them. You are expected to use your good sense; consider the evidence in the case for only those purposes for which it has been admitted, and give it a reasonable and fair construction, in the light of your common knowledge of the natural tendencies and inclinations of human beings.

If an accused be proved guilty beyond reasonable doubt, say so. If not so proved guilty, say so.

Keep constantly in mind that it would be a

violation of your sworn duty to base a verdict of guilty upon anything other than the evidence in the case; and remember as well that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

The foreman will preside over your deliberations, and will be your spokesman here in court.

It will be required that twelve of you must arrive at a verdict to make the verdict unanimous. And when twelve of you have arrived at a verdict, the form of your verdict will be, we the jury find the defendant guilty, or, we the jury find the defendant not guilty.

That is the Court's charge.

Now, the Court is going to have you go out to lunch, including the two alternates. But you are not to discuss this case even at lunch. You are to start discussing it when you get back into your jury room.

Just a moment. Don't go yet. We need Marshals. You now have become juror citizens.

(The Marshals were thereupon duly sworn by the Clerk of the Court.)

THE COURT: As to the two alternates, after you

have completed your lunch, you will be free to go home. You will be discharged.

Now you can step out. But there is just one more thing and that is anything you would like to have read back, from the charge or otherwise, you always have that right.

(The jury thereupon retired from the courtroom.)

THE COURT: Mr. Bezozo, any exceptions to the charge?

MR. BEZOZO: No.

MR. KIMELMAN: Nc.

THE COURT: The charge was read. And both of you have reviewed the charge.

MR. BEZOZO: Yes.

MR. KIMELMAN: Yes.

THE COURT: All right, they will be back probably around 2:15 or 2:30 from lunch. So be back at that time.

MR. KIMELMAN (addressing Clerk): If you need me, I may be in the Grand Jury.

(Thereupon, at 12:50 o'clock p.m., a recess was taken to 2:15 o'clock p.m.)

AFTERNOON SESSION

:GA
R1 PM

(The following occurred at 3:45 o'clock P.M.)

THE COURT: Who has those minutes?

MR. KIMELMAN: Your Honor, we don't know what the last question means.

THE COURT: You don't understand that?

MR. KIMELMAN: ". . . presentation by defendant . . . " whether it means the whole case.

THE COURT: You have got to understand what they are talking about. That's why, when you are trying a case, you are trying it with common people. Some day lawyers are going to learn that. These are common people. They take them off the street, and they bring them into the jury box. That is why they write this way. If they were lawyers like you and I, they would be very explicit as to what they are looking for. All they want is that airway bill. They are trying to find out whether Brea spoke about it at all, or how he got it.

MR. KIMELMAN: That's no problem. We have the testimony marked. But the very last question --

THE COURT: The rest is just adding on. It really doesn't mean that much. Presentation. What they want to know is whether there is any place there that the defendant presented it to Mr. Brea. That's what they are asking. How did Mr. Brea get the airway bill?

That is all they are asking. You don't understand what they are talking about?

MR. KIMELMAN: If that's the case, then they want the testimony of the defendant as to whether she did or did not --

THE COURT: No, not as to the defendant. They want the testimony of Mr. Brea. How he got the airway bill, if it is in there. Do you understand? And if he says the defendant brought it into them, they want that read to them. That is all. It is very simple.

MR. KIMELMAN: Your Honor, I still take the position that they may want the whole testimony of the defendant.

THE COURT: I will be the judge. When they come out, I will ask them what they want.

MR. KIMELMAN: Absolutely. Do you have a copy of the transcript?

THE COURT: I have nothing. I don't go around with the transcripts. But I know what's in there.

MR. KIMELMAN: We have agreed, your Honor, that on page 79 and 80, that is all Mr. Brea's testimony as to the airway bill.

THE COURT: That is what they want. On page 79?

MR. KIMELMAN: And page 80.

THE COURT: All right, exactly. See, you under-

stand it.

MR. KIMELMAN: Yes, sir. I try my best.

THE COURT: Okay.

Bring the jury in.

THE CLERK: We haven't got the defendant.

MR. KIMELMAN: We need the defendant.

THE COURT: Just a moment. We need the defendant.

(The defendant thereupon entered the courtroom.)

THE COURT: Now we can bring the jury in. Have her sit down there right away. Bring the jury in.

(The jury thereupon returned to the courtroom.)

THE COURT: All right, good afternoon.

Now, just the last part which I understand reads as follows:

"Frank Brea's testimony re airway bills.

"Presentation by defendant."

I assume this is what you want from the record. I will read it to you. It is page 79 of the minutes, made on November 14, 1974, before myself:

"Question: Did you have any documents or any other articles with you?

"Answer: Yes, sir.

"Question: Could you tell us what you had with you?

"Answer: I got few papers. I have the airway

bill from Air France, and a few other papers which I didn't look over, figures that was for -- for the people in Air France to look over and tell me.

"Question: Did you have any money with you?

"Answer: Yes.

"Question: How much did you have with you?

"Answer: Three hundred dollars.

"Question: Three hundred dollars?

"Answer: Yes.

"Question: Where did you get the money and documents from?

"Answer: Mr. Richard Salgado.

"Question: I show you what's been marked as Government's Exhibit 1 in evidence, and I ask you if you recognize it?

"Answer: Yes, sir.

"Question: Could you tell us how you recognize it?

"Answer: Yes. This is Air France and got her name on it. It's two pieces, sample.

"Question: Does that represent a copy of the airway bill that you had with you on that day?

"Answer: Yes. They got about two or three. I don't know of these they had. A lot of papers."

Anything else you wish now?

THE FOREMAN: Yes. One of the Jurors wants to see the airway bill she had signed.

THE COURT: The airway bill, is that in evidence?

MR. KIMELMAN: Yes.

THE COURT: You may see that. That is in evidence. Okay.

(The jury thereupon retired from the courtroom.)

THE CLERK: Jury Note, marked as Court's Exhibit number 1.

(Document referred to, being a Jury Note, was marked Court's Exhibit 1.)

MR. KIMELMAN: Your Honor, you have been working with juries longer than I have.

THE COURT: There is nothing like experience, I told you that.

MR. KIMELMAN: You were certainly right in this case. I would have sworn they wanted all the testimony of the defendant.

THE COURT: I know what they want. I think they have the airway bill. They are street people. They don't understand. Just have the Marshal ask them if they have the document. Do you know what the airway bill is? What Exhibit?

MR. KIMELMAN: It's Exhibit 1. It was sent in.

THE COURT: Tell them that the airway bill is

Exhibit 1, and they have it in their room already. Have the Marshal tell them that. The airway bill is Exhibit 1, and they have it in their room already. Okay.

Is that all we have out here now?

(Airway bill delivered to jury room.)

(Recess.)

(After recess.)

(The following occurred at 4:50 o'clock P.M.)

THE CLERK: Jury note, marked as Court's Exhibit number 2.

(Document referred to, being a jury note, was received and marked Court's Exhibit number 2.)

THE COURT: All right, bring them in.

(The jury thereupon returned to the courtroom at 5:00 o'clock P.M.)

THE COURT: All right.

THE CLERK: Mr. Foreman, Ladies and Gentlemen of the Jury, have you agreed upon a verdict?

THE FOREMAN: We have.

THE CLERK: Please stand.

You have?

THE FOREMAN: Yes.

THE CLERK: How do you find the defendant, Guilty or Not Guilty?

THE FOREMAN: We find the defendant Guilty.

THE CLERK: As the Court has received your verdict, do you say you find the defendant Guilty, and so say you all?

THE FOREMAN: So say we all, yes.

THE COURT: Do you wish the jury polled?

MR. BEZOZO: Yes.

THE COURT: Poll the jury.

THE CLERK: Juror No. 1, is that your verdict?

JUROR NO. 1: That is my verdict.

THE CLERK: Juror No. 2, is that your verdict?

JUROR NO. 2: Yes.

THE CLERK: Juror No. 3, is that your verdict?

JUROR NO. 3: Yes.

THE CLERK: Juror No. 4, is that your verdict?

JUROR NO. 4: Yes.

THE CLERK: Juror No. 5, is that your verdict?

JUROR NO. 5: Yes.

THE CLERK: Juror No. 6, is that your verdict?

JUROR NO. 6: Yes.

THE CLERK: Juror No. 7, is that your verdict?

JUROR NO. 7: Yes.

THE CLERK: Juror No. 8, is that your verdict?

JUROR NO. 8: Yes.

THE CLERK: Juror No. 9, is that your verdict?

JUROR NO. 9: Yes.

THE CLERK: Juror No. 10, is that your verdict?

JUROR NO. 10: Yes.

THE CLERK: Juror No. 11, is that your verdict?

JUROR NO. 11: Yes.

THE CLERK: Juror No. 12, is that your verdict?

JUROR NO. 12: Yes.

THE CLERK: Jury polled.

THE COURT: All right, jury polled.

The jury is apparently unanimous.

You are going to be discharged -- Are they finished?

THE CLERK: Oh, yes.

THE COURT: You are all through. Thank you very much for your services, and be careful going home.

Good night.

(The jury thereupon retired from the courtroom.)

THE COURT: All right. Do you wish to reserve on your motions at this time? Written motions?

MR. BEZOZO: Yes, your Honor.

THE COURT: You have seven days to make a written motion before the Court to ask the Court to direct a verdict of acquittal. And the motion must be made within seven days.

MR. KIMELMAN: The Government will ask that bail be continued.

THE COURT: What bail is she on?

MR. KIMELMAN: 25,000, is it? 50,000 surety.

THE COURT: I don't know how long it would take for a Probation Report. I think you had better come back tomorrow morning and make your application.

MR. BEZOZO: All right.

THE COURT: Either that, or Friday. I will reserve at this time on this application for bail reduction. I will put it over to Friday morning, and also any motions you have to make can be made on Friday orally, and will be supported by written papers.

MR. KIMELMAN: Your Honor, will your chambers contact the Probation Department? Perhaps the Probation Report can be speeded up.

THE COURT: It takes six or eight weeks, no matter how you turn it. No matter how you turn it, it takes six to eight weeks. All right.

* * *

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* * *

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA, :

- against - :

AMPARO PELAEZ DE GARCES, : 74-CR-579

Defendant. :

- - - - - - - - - - - - - - - - - - - x

United States Courthouse
Brooklyn, New York

November 22, 1974

B e f o r e:

HONORABLE MARK A. COSTANTINO, U.S.D.J.

MICHAEL DIAZ
OFFICIAL COURT REPORTER

Appearances:

DAVID C. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: STEVEN KIMELMAN, ESQ.
Assistant United States Attorney

STEVEN BEZOZO, ESQ.
Attorney for defendant.

Also Present:

MS. CARMEN MALDONADO
Interpreter

- - -

THE CLERK: Criminal motion, United States against Amparo Pelaez De Garces.

MR. BEZOZO: Good morning, your Honor.

MR. KIMELMAN: Good morning, your Honor.

THE COURT: Good morning. Ready?

MR. BEZOZO: Your Honor, I would like to hand you a memorandum of my motion. Basically, I think my memorandum was pretty much an outline of the law and I am asking your Honor to make a judgement of acquittal under Rule 29 of the Federal Rules of Criminal Procedure and the fact that I contend that it was never proven that the defendant actually had knowledge of the cocaine being in the bedboard.

And therefore it was really a question that the Jury couldn't decide because the Jury just couldn't render a verdict of guilty due to the facts in the case.

THE COURT: All right. What do you have to say?

MR. KIMELMAN: The record of this trial was replete with evidence both physically and testimonially as to the basis for this Jury to find that this defendant knowingly imported cocaine.

THE COURT: Where is the record replete with evidence that the Jury could draw the inference that this woman had knowledge of cocaine in this car.

MR. KIMELMAN: The defendant took --

THE COURT: And I haven't changed my mind, I have been saying this during the entire trial.

MR. KIMELMAN: I understand, your Honor. Your Honor, the defendant took the stand and on the stand the defendant denied having an airway bill, and in direct contradiction --

THE COURT: She didn't recognize having one, as I recall. I think she was asked: Do you recog= nize this piece of paper, and she said no.

MR. KIMELMAN: Your Honor, on page 245 of the transcript, questions posed by myself:

"Question: Inother words, the only thing you gave the travel agency was this piece of paper, Government's Exhibit 17?"

That was, if your Honor recalls, the receipt.

"Answer: Yes, that one."

"Question: And you never gave them Government's Exhibit 1, this airway bill?

"Answer: No, the one I handed was that paper."

So she did definitely say she never gave the [illegible] identified, and the Jury accepted the testimony, that the airway bill shows a false address for the defendant, and the Jury could infer that the [illegible]

THE COURT: You mean a false address is conclusive evidence that someone is going to commit a crime?

That is going to cause --

MR. KIMELMAN: Well, your Honor, anything a defendant does --

THE COURT: Not one isolated little fact --

MR. KIMELMAN: But all these things together. We have the defendant taking the witness stand who says she's being paid $100 to import this board.

The Jury had ample opportunity to evaluate this story of the defendant in light of their own common sense and apparently disagreed with the credibility of the defendant.

THE COURT: This is an act of a reasonable person believing she is bringing an illegal item into the country for $100? This woman was charged with a very, very serious crime.

MR, KIMELMAN: I understand.

THE COURT: This crime is fifteen years and twenty-five thousand dollar fine.

When you are talking about $100 to make somebody bring in -- whatever the amount was --

MR. KIMELMAN: Three pounds of cocaine.

THE COURT: You have to stretch [illegible]

of fav. What did she know aboutit? How much? How about the witness with her down there where this presume deal was made to bring the headboard into the country?

What about her testimony, has she something to gain?

MR. KIMELMAN: The Jury obviously made a determination of her credibility as to whether it backed up the defendant's story or not.

THE COURT: It is a question of knowledge.

MR. KIMELMAN: Of course it is a question of knowledge. The Jury was out two and a half hours, they had the opportunity to observe the defendnat on the stand.

They had the opportunity to observe the defendant's friend on the stand. They had the opportunity to observe all the Government witnesses on the stand.

THE COURT: Would you say that the answers given by the defendant on the witness stand were not frank answers?

Or the demeanor indicated she was lying?

MR. KIMELMAN: By the testimony of this defendant that she was paid $100 to bring the beds in and she went through all this trouble --

THE COURT: Mr. [illegible] went through more trouble

than she did.

How about the part where they were going to drill holes in the headboard and she said "Go ahead."

What kind of knowledge does that indicate?

MR. KIMELMAN: If you recall, I did not argue that to the Jury.

THE COURT: Of course not, but it's still a fact in the case. It goes again to the guilty knowledge of the party.

MR. KIMELMAN: I don't understand. Am I supposed to re-try the case for the Court?

THE COURT: No. If that is your attitude -- well, I will hear you again.

MR. BEZOZO: Me, your Honor?

Well, your Honor, you brought out the point I was going to bring up.

THE COURT: Do you have anything else you would like to submit?

MR. KIMELMAN: Yes, your Honor.

THE COURT: Let me hear it.

MR. KIMELMAN: Your Honor, the defendant's friend testified on the stand that she changed over a thousand dollars worth of dollars into pesos during the course of the summer.

THE COURT: What does that show

MR. KIMELMAN: It shows -- the defendant also apparently was able to afford a trip to Columbia with two children and we know from the other defendant, the witnesses' testimony, this was a cost of an excess of $1200.

This all goes --

THE COURT: Isn't that long before any deal is supposed to have been made?

MR. KIMELMAN: No, during the same period of time. While in Columbia on vacation.

THE COURT: The Jury is expected to believe she is still willing to do this all for $100?

MR. BEZOZO: And your Honor, it wouldn't be a $1200 trip. There are probably discounts for children and she is not going to stay in a hotel like you and I would where the cost would be exorbitant over a period of time.

MR. KIMELMAN: The Government's evicence is that the airway bill shows this is imported -- and from the Government's evidence the Jury could have concluded that the defendant herself purchased this furniture.

Corbins testified that when the defendant was interviewed after he arrest the defendant said "I bought the furniture in Columbia," and the Jury had ample evidence to believe in evaluating the credibility and the

story of the defendant that this defendant in fact did buy the furniture.

THE COURT: I don't think anybody denies it. That is not the issue.

MR. KIMELMAN: The defendant took the --

THE COURT: The question is, did she know that there was cocaine in the headboards?

MR. KIMELMAN: She got on the stand and denied she bought the furniture. The Jury can take that issue also --

THE COURT: All right. The Court will reserve decision. I will have a determination within fifteen minutes.

MR. KIMELMAN: At this time, for the record, on appeal, the Government would offer an exhibit for identification, a letter -- it can be either a Court's exhibit or Government exhibit.

THE COURT: Mark it a Government exhibit.

MR. KIMELMAN: Very good.

THE COURT: I have no exhibits, except what the Jury gives me.

MR. KIMELMAN: Your Honor, there is also a bail application at this time.

THE COURT: Well, I will take up the bail application after the decision. There is no sense putting the

horse behind the car.

At a quarter to twelve we met in the courtroom.

The Clerk: Envelope, letter, and translation of the letter marked for identification as Government's Exhibits 1, 2, and 3.

(A recess was taken at this time.)

THE COURT: All right. The Court is ready to render an opinion on the basis of the motion that has been made for a directed verdict, judgement of acquittal, in the case of United States against Amparo Pelaez De Garces, 74-CR-579.

On November 19th, 1974, defendant Amparo Pelaez De Garces was found guilty by a Jury on a count of an indictment charging violations of Title 21, United States Code, section 952 (a) and 960(a) and Title 18, United States Code, section 2.

This is a motion pursuant to Rule 29 of the Federal rules of criminal procedure for a judgement of acquittal.

In determining whether the motion should be granted the Court must decide whether the evidence viewed as a whole was adequate to permit a Jury to find that [illegible] element of the alleged crime had been established beyond a reasonable doubt, United States against Brown, 456 F.2d 293 (2nd Cir. filed Dec. 19, 1972), cert. denied 407 U.S. 910 (1971).

The essential elements of thefirst count of the indictment are as follows:

First, that the defendant imported a quantity of cocaine into the United States from abroad; second, that the defendant knew that the substance she was importing to the United States was cocaine, or some other illicit drug; and third, that the defendant understood that she was acting illegally.

The rule to be followed in passing on a motion for a judgement for acquittal is explicitly stated in United States against Taylor, 464, F.2d, 240, 243, (sec. circuit 1972); "A trial judge . . . must determine whether on the evidence, giving full play to the right of the Jury to determine credibility, weigh the evidence, and draw justifiable inferences of fact, a reasonable mind might fairly conclude guilt beyond a reasonable doubt. If he concludes that upon the evidence there must be such a doubt in a reasonable mind, he must grant the motion."

As noted above, one of the essential elements of the count on which the Jury returned a guilty verdict was knowledge that she was importing a controlled substance. In the factual context of this case, this means [illegible] contained a controlled substance. In its effort to show

that defendant had knowledge of the controlled substance, the prosecution introduced only circumstantial evidence. In appropriate circumstances, circumstantial evidence may be sufficient to justify an inference that a defendant was aware that the controlled substances were illegally imported, United States against Nathan, 476 F.2d 456, (sec. circuit 1973, cert. denied) 414 United States 823, (1973).

But in the case at bar, the circumstantial evidence of her knowledge was so weak as to compel this court to conclude that as a matter of law, there must be a reasonable doubt in a reasonable mind as to whether one of the essential elements of the crimes charged was present here.

In United States against Sisson, 399 U.S. 267, 290, (1969), the Court held that Rule 29 expressly allows a Federal judge to acquit a criminal defendant, after the Jury returns a verdict of guilty.

In view of the Taylor rule and the Court's finding on the failure to overcome a reasonable doubt an essential element of the crimes charged, this Court is compelled to direct a judgement of acquittal.

This Court emphasizes that it has no intention of substituting its judgement for that of the Jury in

Rather the Court finds that as a matter of law the evidence produced at trial failed to prove beyond a reasonable doubt an essential element of the crimes charged.

This decision is made inthe interest of justice.

That is the Court's decision.

MR. KIMELMAN: Will the Court stay execution in order to allow the Government to take an immediate appeal?

THE COURT: No, a judgement of acquital is the Court's ruling. You can take an immediate appeal.

MR. KIMELMAN: Your Honor, if this defendant is released now this Court or any other Court will never see her again.

THE COURT: This defendant is free at this time. The Court has directed a judgement of acquittal.

* * *

057-4492 4740 | .06 | 29.8.74 | | | USD | AF1342/3 | A 386 057-4492 4740

BOGOTA - COLOMBIA | NEW YORK

11 PTP | FRANCE | HICDF

21 NUMERO DE COMPTE DU DESTINATAIRE | NOM ET ADRESSE DU DESTINATAIRE

AMPARO PELAEZ DE GARCES
51-55 Winklein St.
Ap. 5C. Elmhurst
NEW YORK, N.Y. 11373
EE.UU.

P/E-1

31 NUMERO DE COMPTE DE L'EXPEDITEUR | NOM ET ADRESSE DE L'EXPEDITEUR

GONZALO RAMIREZ CRUZCO
Calle 63 No. 65-65
BOGOTA - COLOMBIA

41 NUMERO DE COMPTE DE L'AGENT DU TRANSPORTEUR EMETTEUR | NOM ET VILLE DE L'AGENT DU TRANSPORTEUR EMETTEUR

COLDANZAS LTDA.

CODE IATA (OU ATAF) DE L'AGENT
76-1 1043

NON NÉGOCIABLE
LETTRE DE TRANSPORT AÉRIEN 14256

Émise par
AEROLINEAS ARGENTINAS
COMPAGNIE NATIONALE DE TRANSPORTS AÉRIENS
1, Square Max Hymans - 75 PARIS XV
MEMBRE DE L'IATA ET DE L'ATAF
R. C. SEINE 54 B 9127

Si le transport comporte une destination ou une escale dans un pays autre que le pays de départ, ce transport peut être régi par la Convention de Varsovie qui en général limite la responsabilité du transporteur en cas de perte ou d'avarie de marchandises. Les arrêts prévus sont les lieux (autres que les lieux de départ et de destination) indiqués sous itinéraire demandé et ou les lieux figurant aux horaires du dos transporteurs comme des arrêts réguliers sur l'itinéraire. L'adresse du premier transporteur est l'aéroport de départ.
VOIR LES CONDITIONS DE TRANSPORT AU DOS

L'expéditeur certifie que les indications portées sur le présent document sont exactes, accepte les CONDITIONS SPÉCIALES AU VERSO, admet que la responsabilité du transporteur soit limitée [illegible] conformément à l'article 4 (c) et accepte la dite limite du valeur, à moins qu'une valeur pour le transport plus élevée ne soit déclarée au recto du présent document [illegible] frais supplémentaires.

SIGNATURE DE L'EXPÉDITEUR

REPRESENTE PAR COLDANZAS LTDA. (03/0800241)

Le transporteur certifie que les marchandises décrites ci-dessous ont été reçues en bon état apparent (sauf réserves contraires portées ci-dessous) et qu'elles sont soumises pour le transport aux CONDITIONS SPÉCIALES AU VERSO.

AUGUST 29TH. 1974 (Date) BOGOTA COLOMBIA (lieu)
ÉTABLIE LE

JORGE [illegible] G.
SIGNATURE DU TRANSPORTEUR EMETTEUR OU DE SON AGENT

Les exemplaires 1, 2 et 3 de cette lettre de transport aérien sont originaux et ont la même validité

51 MONNAIE: USD | VALEUR DÉCLARÉE POUR LE TRANSPORT: NVD | VALEUR DÉCLARÉE A DOUANE: NVD | MONTANT DE L'ASSURANCE

ASSURANCE: Si l'expéditeur demande que son expédition soit assurée conformément aux conditions figurant au verso, indiquer le montant à assurer en chiffres dans la case intitulée "Montant de l'Assurance".

TAXATION AU POIDS: PP | TAXATION A LA VALEUR | AUTRES FRAIS: PP

RENSEIGNEMENTS COMPTABLES
Rate of exchange: S25.90 - US$ 156.51 x 25.90 = $ 4.053.61

NOMBRE DE COLIS RCP	POIDS BRUT	K/L	Classe du tarif	N° ARTICLE DE LA MARCHANDISE	POIDS DE TAXATION	TAUX/MONTANT	NATURE ET QUANTITÉ DES MARCHANDISES (Y COMPRIS DIMENSIONS OU VOLUME)
2	141	K	Q	GCR	141 K	1.11	TWO (2) PIECES - CRATES SAID TO CONTAINING: Wood Furnitures (Samples)

PAYÉ
81 TAXATION AU POIDS PAYÉE: 156.51 | V | TAXATION A LA VALEUR PAYÉE | C | TOTAL DES AUTRES FRAIS PAYÉS: DUS AU TRANSPORTEUR | A | DUS A L'AGENT | P | TOTAL PORT PAYÉ | RÉSERVÉ AU TRANSPORTEUR A DESTINATION

R AUTRES FRAIS (TAXATION AU POIDS ET A LA VALEUR EXCEPTÉS) | PORT ET FRAIS DUS EN MONNAIE DU PAYS DE DESTINATION

S | MONTANT DU C.O.D.

T FRAIS A L'ARRIVÉE | TOTAL DES FRAIS

DU 81 TAXATION AU POIDS DUE | V | TAXATION A LA VALEUR DUE | C | TOTAL DES AUTRES FRAIS DUS: DUS AU TRANSPORTEUR | A | DUS A L'AGENT | I | MONTANT DU C.O.D. | TOTAL DU

91 040

9-04-74

RENSEIGNEMENTS POUR LE TRAITEMENT DE L'EXPÉDITION

[illegible] 1 240 74085?

057-4492 4740

ORIGINAL 2 (POUR LE DESTINATAIRE)

A 387

AIR FRANCE

TALLY SHEET

MASTER

HAWB

NEW YORK
(PORT OF ENTRY)

ITEM 2/C - 1 DATE 9-06-74

CONSIGNEE Perry Le Grues AND/OR BROKER:

Marks & Numbers of Packages As Per AWB	Description and Quantity of Merchandise Number and Kind of Packages	Gross Weight in Pounds (See Note 1)	Foreign Port of Lading and Date of Sailing (See Note 2)	Bill of Lading No.
	1 T.V. Set	41	PAR	[illegible]
	1 Box			

Plane No

Flite No

Arrival Date 9/11

AIR FRANCE
(Name of Carrier)

(Agent)

GOVERNMENT EXHIBIT 2

DOCUMENTS READY

TIME:

DATE:

C.O.D. ☐ BANK RELEASE ☐ CASH ☐

NOTIFICATION

PHONE #

SPOKE TO

TIME DATE

AF AGENT

SPOKE TO

TIME DATE

AF AGENT

INSTRUCTIONS

ARRIVAL NOTICE

SENT ON 9/11/74 BY TS

STORAGE AREA

OLD BIN 99
CONTACT
[illegible]

REMARKS:

Gen Del 9/11/74 TS

A 388

1 From:

2 Amfac. Foods & Canners

3

4

5

6 To:

7 Campbell Soup & Canners

8

9

10

Date	Receipt	Deposit	Balance
9/5/74		200 —	

Date 9/5/74 | Telephone No

ADDRESS

AGENCY

GOVERNMENT EXHIBIT 16 74CR579

Excursion To: | Tel.

Res. by | Conf. by | Bus No.

Departure place

Single	Double	Twins	Triple	Quads
Radio	T. V.	Papers	Customer	Other

Remarks: Receipt Canco & Air Freight. (5 BEAS)

Comm. | Tick No.

A 389

ARTESANIAS COLONIALES

Especialidad Muebles en Estilo

Dirección: Carrera 52 No. 52-22

Tels: 41-48-90 y 41-35-53

VALOR	TOTAL	Sra AMPARO PELAEZ DE GARCES.
		Valor de 5 camas estilo Luis xl
10.000	10.000	Son Diez mil pesos M/C. Valor Uni
		tario 2.000 pesos C/U.
		Equivalentes a US$ 500.oo

CANCELADO

GOVERNMENT EXHIBIT 17 72 CR 5 79

476973

OC 9-11-74

A 390

TO WHOM IT MAY CONCERN:

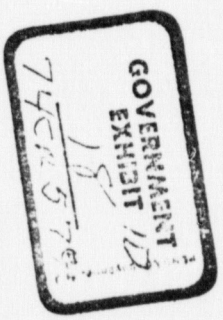
I, AMPARO PELAEZ DE GARCES WITH THE ALIEN CARD NO.A18 411 306 AND WITH PERMANENT RESIDENCE AT 51-55 VANKLEEN ST.APT.5-E ELMHURST,N.Y.11373, I WISH TO GIVE TO MR. JAVIER BREA SPECIAL POWER TO PICK UP MY IMPORT SAMPLES.

Amparo Pelaez de Garces
AMPARO PELAEZ DE GARCES

SWORN TO BEFORE ME THIS
6TH DAY OF SEPTEMBER,1974

Reynerio El-Hassan
NOTARY PUBLIC

REYNERIO EL-HASSAN
Notary Public, State of New York
No. 41-6169845
Qualified in Queens County
Term Expires March 30, 1976



FRANCE D'C 9-11-74

A 391

CASH COLLECTION RECEIPT

NO. 18465 DATE: 11 SEP 74

AWB #: 4492 4740 DATED 040 SEP 74

DESCRIPTION OF CHARGES	AMOUNT
AIR FREIGHT CHARGES	$
C. O. D.	
C. O. D. FEE	
TERMINAL CHARGES:	
(IATA RESO. 512 B) – STORAGE	
– CUSTOMS PRESENTATION	250
OTHERS:	
TOTAL COLLECTED	250

GOVERNMENT EXHIBIT 22 EVP 74CR579

RECEIVED BY AF AGENT: Amparo Telaez de G. SIGNATURE

R2 CODE

AMN/AC 107 (1-73)

CUSTOMER'S COPY

A 392

Carrera 50 No. 51-23
Oficina 205
Edificio Mariscal Sucre

JOSE ALONSO FRANCO B.
ASESORIAS TRIBUTARIAS CONTABLES
Y REPRESENTACIONES
MEDELLIN

TELEFONOS:
Oficina 42 99 85
Residencia 48-70-72

GOVERNMENT EXHIBIT

JC 8-22-74
D'C 8-22-74

Sra
IRMA MEJIA
51-55 Vankleen Av Ap 5E
Elmhurst 11373 New York.

EVE

A 393

Carrera 50 No. 51-23
Oficina 205
Edificio Mariscal Sucre

JOSE ALONSO FRANCO B.
ASESORIAS TRIBUTARIAS CONTABLES
Y REPRESENTACIONES.
MEDELLIN

TELEFONOS:
Oficina 42-99-85
Residencia 48-70-72

GOVERNMENT EXHIBIT 2

Medellín, 8/16/74

Mi recordada Irma: Con la presente te llega mi saludo cordial y efusivo y mis mejores votos por tu bienestar.

Cariño. Después de un sinnumero de problemas conseguidos gratuitamente, y a Dios gracias ya solucionados te escribo esta con el fin de ponerte en antecedentes sobre el negocio que me trajo a esta ciudad hace ya casi 2 meses. Como debes recordar en mi pasada llamada te decía que jorge estaba próxima a viajar; y que el sabía todo lo relacionado con el negocio, pero como aún no sabemos si èl no tendrá obstaculos para su ingreso al país creo necesario darte detalles para que sepas que hacer en caso de que Jorge tenga algún problema.

Mi amor. Comencemos por la cantidad; son en total un aparato y medio; como los dueños somos 3 cada paquete va con un número, el mío es el No 1, como hace más de un mes que lo compré ha rebajado, es el único que no esta completo; de resto los otros dos tienen la cantidad exacta y un poco más. Cantidad de camas: 5. Una de las partes de la cama; o sea el espaldar grande tiene en una de las patas una X marcada en la parte de abajo, o sea que para poder verla la tienes que levantar¿ alrededor de ese espaldar esta todo el paquete, en la única parte que no hay mercandia es en las patas, el resto de las camas no tienen nada.

La persona que va a hacer el reclamo se llama AMPARO PELAEZ DE GARCES, y debe viajar el 23 de este mes. La localizas en el telefono 4769773, cuándo preguntes por ella y no la encuentres no dejes - ninguna razón, pués en esa casa no saben nada dí que mejor buelves a llamar más tarde. La correspondencia debe llegar ala dirección que usted me dío, el precio de cada "libreta" es de 12.000 dls. Amor la mercancia es muy buena, en especial la No 1, toda se presta para hacerle más de un corte creo que en esta oportunidad pueden obtener buenos ingresos, espero que a Mrs Villegas no lo tengan en cuenta para esto, ya que según informaciones esta dedicado al amor y no a los negocios.

Si todo sale bién¿ como todos lo esperamos debes pagarle a esa señora la suma de 2.000.dls, y luego deducir los gastos que tengan, Dña Amparo lleva para gastos de Trasnporte y impuestos 300 dls, creo que es suficiente, lo único que no te puedo informar el el nombre de la Compañía que llevará eso, pués el próxima lunes haran el despacho. Si tienes alguna duda o para algomo que no este programado en esta, me puedes llamar pero siempre en las horas de la noche, o antes de las 8 de la mañana, no se extrañen si la mercancia se demora más de la previsto, pués ya usted recuerda lo que pasó en Enero.

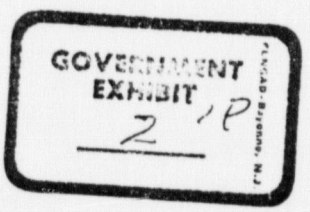
A 394

La Sra Ampara tiene tu teléfono, y debe de llamarte tan pronto llegue ella no tiene problemas porque es residente. Aquí se ha hecho todo lo que esta a nuestro alcance porque todo salga bién, también hagan Uds lo propio para que todo salga como en las otras ocaciones.

Para terminar esta te diré que si me consigo la visa en Cali es provable que viaje, espero todavía te encuentres li bre de compromisos, para bolver a recordarnos de MiaMi, aunque yo a cada rato me acuerdo de ese inolvidable día¿ y tu te acuerdas? lo du do. Dejemos para cuando yo llegue poer decirte más de una cosa, espe remos haber como termina lo que ya esta para arrancar.

Mamacita para terminar solo me resta desearles mucha suèrte y ojalá podamos celebrar el exito de esta empresa. Re cibe muchosbesos de quién con tanta nostalgia te recuerda.

Atte, William.



A 395

GOVERNMENT EXHIBIT 3

TRANSLATION OF LETTER DATED
AUGUST 16, 1974 ADDRESSED TO IRMA MEJIA

Carrera 50 No. 51-23
Room 205
Mariscal Sucre Bldg.

JOSE ALONSO FRANCO B.
Tax consultants and representations
M E D E L L I N

Telephones:
Office 42-99-85
Residence 48-70-72

Medellin, 8/16/74

My well remembered Irma: With the present I am sending you my friendly and warm greetings as well as my best wishes for your well-being.

Darling. Following a countless number of problems that I encountered gratuitously and that, thanks God, have already been resolved, I am writing to you this letter in order to brief you on the business that brought me to this city almost two months ago. As you will remember, I told you, in my last call, that Jorge was going to travel shortly; and that he knew everything relating to the business, but being that we still do not know whether he will find any obstacles to enter the country, I believe it necessary to give you details in case that Jorge should have any problem.

My love. Let's start with the quantity; there are in total one and-a-half appliances; being that there are three owners, each package bears a number, mine is number one, since I bought it over one month ago, it has lost weight, it is the only one that is not complete; the rest, the other two have the exact amount and a little more. Quantity of beds: 5. One of the parts of the bed, that is to say the big headboard, has in one of the legs an X that has been marked underneath, in other words, to see it you have to lift it, around this headboard is the entire package, the only part that does not have merchandise are the legs, the other beds have nothing.

The person that will make the claim, her name is AMPARO PELAEZ DE GARCES, and she is supposed to travel on the 23rd of this month. You can locate her at the telephone number: 4769773, if you ask for her and cannot locate her, do not leave any message because in that house they do not know anything, you should rather say that you will call later. The mail must arrive at the address that you

gave me, the price of each "booklet" is 12.000 dollars. My love, the merchandise is very good, specially number 1, all of it can be cut more than once, I believe that this time you can obtain good proceeds, I hope that you will not count on Mrs. Villegas for this, because according to information he is dedicated to love and not to business.

If everything goes well, as we all hope, you should pay that lady the sum of 2.000 dollars, and afterwards deduct the expenses incurred, Mrs. Amparo is carrying 300 dollars for transportation and tax expenses, I believe it is enough, the only thing I cannot inform you is the name of the Company that will carry that because the dispatch will be made this coming monday. If you have any doubt or something not planned should happen here, you can call me but always at night or before 8 o'clock in the morning, do not be surprised if the merchandise takes longer than expected, you remember well what happened in January.

Mrs. Amparo has your telephone number and she is supposed to call you as soon as she gets there. She does not have any problem because she is a resident. Here, we have done everything within our reach so that everything goes well, you should also do likewise in order that all goes as in the other occasions.

To finalize let me tell you that if I obtain a visa in Cali I will probably travel, I hope that you will still be free to remember again about Miami, although I keep thinking about that unforgettable day very often, and you, do you remember it? I doubt it. Let's leave it for when I get there to tell you more than one thing, let's see what is the end of what is about to begin.

Honey, to finish I only want to wish you lots of luck and let's hope that we shall be able to celebrate the success of this venture. Many kisses from someone who remembers you with nostalgia.

Sincerely,

William.

AFFIDAVIT OF MAILING

STATE OF NEW YORK
COUNTY OF KINGS } ss
EASTERN DISTRICT OF NEW YORK

LYDIA FERNANDEZ being duly sworn,

deposes and says that he is employed in the office of the United States Attorney for the Eastern District of New York.

That on the 27th day of March 19 75 he served two copies of the within

Appendix

by placing the same in a properly postpaid franked envelope addressed to:

Steven Bezozo, Esq.
225 Broadway
New York, N. Y.

and deponent further says that he sealed the said envelope and placed the same in the mail chute drop for mailing in the United States Court House, Washington Street, Borough of Brooklyn, County of Kings, City of New York.

Lydia Fernandez
LYDIA FERNANDEZ

Sworn to before me this

27th day of March 19 75

Olga S. Morgan
OLGA S. MORGAN
Notary Public, State of New York
No. 24-4501966
Qualified in Kings County
Commission Expires March 30, 1976